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Follow-up to and implementation of the outcome of the 2002 International Conference on Financing for Development and the 2008 Review Conference

Follow-up to and implementation of the Monterrey Consensus and Doha Declaration on Financing for Development

Report of the Secretary-General**

Summary

Pursuant to General Assembly resolution 65/145, the present report provides an annual assessment of the state of implementation of the Monterrey Consensus and Doha Declaration on Financing for Development. The recent developments are presented under each of the six thematic areas: mobilizing domestic financial resources for development; mobilizing international resources for development: foreign direct investment and other private flows; international trade as an engine for development; increasing international financial and technical cooperation for development; external debt; and addressing systemic issues: enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development. Other recent developments related to strengthening of the financing for development intergovernmental follow-up process are presented in a section on "Staying engaged".

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I. Mobilizing domestic financial resources for development

1. After increasing from 25 per cent to almost 31 per cent of gross domestic product (GDP) between 2000 and 2007, the average savings rate in low- and middle-income countries dropped to 28 per cent in 2009 during the course of the financial and economic crisis. However, a number of developing countries and emerging economies were able to enhance the scope for domestic resource mobilization, despite the setback of the recent crisis. Nevertheless, this development has been highly uneven across developing regions. Domestic savings, for instance, stagnated in sub-Saharan Africa, increased moderately in Latin America and the Caribbean and soared in East Asia and the Pacific.[1]

2. Sustained improvement in domestic resource mobilization depends on continued economic recovery. Growth of global output is expected to be 3.3 per cent in 2011 and 3.6 per cent in 2012, down from 3.9 per cent in 2010. Developing countries, particularly the large emerging economies, have been major drivers of the post-crisis expansion of the world economy. In contrast, growth remains feeble in many developed countries.[2] However, there are a number of concerns about growth prospects of developing countries, including the risk of spillovers from developed countries, rising domestic inflation, potential domestic asset price bubbles fuelled by large capital inflows, exchange rate misalignment and commodity price volatility. Macroeconomic policies in many developing countries have shifted to monetary and fiscal tightening and exchange rate appreciation, often in response to higher commodity prices, which may slow down the growth momentum.

3. Financing poverty eradication and expanding employment opportunities, especially for poor and disadvantaged population groups, are important objectives of national development strategies. The Millennium Development Goals Summit (High-level Plenary Meeting of the General Assembly, 20-22 September 2010) recognized the progress made towards achieving the Millennium Development Goals, including in poverty eradication, despite setbacks and mixed performances both within and across developing countries.[3] Extreme poverty worldwide is projected to fall from 25.2 per cent of total population in 2005 to 14.4 per eent in 2015, with sub-Saharan Africa (35.8 per cent) and South Asia (22.4 per cent) accounting for the highest projected poverty rates in 2015.[4] As the ongoing global economic recovery remains fragile and uneven, global unemployment remains elevated compared to the pre-crisis level. The global unemployment rate stood at 6.2 per cent in 2010, well above the rate of 5.6 per cent in 2007. Many countries are facing specific employment challenges such as rising long-term unemployment and high youth unemployment. In terms of economic policies, countries with large trade surpluses and sound macroeconomic fundamentals should consider strengthening domestic demand to boost employment and growth.[5]

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[1] World Bank, *World Development Indicators*.

[2] *World economic situation and prospects as of mid-2011* (E/2011/113).

[3] General Assembly resolution 65/1.

[4] World Bank and International Monetary Fund (IMF), *Global Monitoring Report 2011: Improving the Odds of Achieving the MDGs, Heterogeneity, Gaps, and Challenges*.

[5] International Labour Office, *Global Employment Trends 2011: The challenge of a jobs recovery*; and International Labour Conference, *Recovering from the world financial and economic crisis: a Global Jobs Pact*, 2011.

4. Domestic resource mobilization is a particularly suitable area for exercising national ownership and to developing and implementing policies that are in line with country needs. In contrast to external development financing, key policy and institutional drivers, such as the tax system, are under the direction of Governments. Governments should therefore attach greater importance to domestic resource mobilization within their development strategies.

5. The development of a sound and broad-based financial sector is essential for the effective mobilization and channelling of domestic resources to productive activities. In many developing countries, challenges in financial sector reform remain, including strengthening financial regulation and regional financial markets. However, domestic credit to the private sector in low- and middle-income countries increased from 49 per cent to almost 60 per cent of GDP from 2000 to 2008, albeit with considerable differences across developing regions.[6]

6. In recent years, the concept of financial inclusion has gained higher priority on the policy agenda. The concept is based on the notion that access to a wide range of financial services by poor and vulnerable population groups and small- and medium-sized enterprises is beneficial for development and domestic resource mobilization. Inclusive finance represents a more holistic approach than microfinance and includes savings, payment, insurance and other services tailored specifically to the needs of low-income borrowers and savers.[7] Group of Twenty (G-20) leaders, at their Seoul summit in November 2010, launched the Global Partnership for Financial Inclusion to advance the financial inclusion agenda in cooperation with non-G-20 members, the United Nations and other international stakeholders.

7. Given the need for public investments in the development process, the generation of public revenues is a critical component of domestic resource mobilization. Increasing government revenues remains a major challenge in a number of developing countries. During the recent financial crisis, government revenue in emerging economies and developing countries dropped[8] from an average of about 29 per cent in 2007/08 to 27 per cent of GDP in 2010, mainly on account of slower growth, compared to an average level of 36 per cent in the advanced economies.[9] Growth-promoting policies are central to raising public revenues. Tax collection efforts can also be supported by appropriate tax policies, modernized, transparent and equitable tax systems, effective tax administrations, broadening of the tax base and combating tax evasion. Therefore, developing countries should step up fiscal and tax reform efforts. International tax cooperation, including its institutional arrangements, should be further strengthened.[10]

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[6] World Bank, *World Development Indicators*. In some cases, fluctuations in the ratio of domestic credits also reflect constraints in accessing external financing.

[7] United Nations, *Building inclusive financial sectors for development*, 2006; *United Nations Secretary-General's Special Advocate for Inclusive Finance for Development, Annual Report to the Secretary-General*, September 2010.

[8] For discussion of the impact of the global economic crisis on fiscal space in developing countries, see *The Global Social Crisis: Report on the World Social Situation 2011* (ST/ESA/334).

[9] IMF, World Economic Outlook database, April 2011, available from www.imf.org.

[10] E/2011/76 provides an overview of initiatives to increase international tax cooperation, including the International Tax Dialogue (a joint initiative by the World Bank, IMF, OECD and other stakeholders).

8. Dynamic private sectors are the main drivers of growth, employment, investment and innovation. Governments should continue to establish regulatory and policy frameworks that are conducive to private productive activities. A number of developing countries have improved business regulations and developing countries in general have become increasingly active in regulatory reform.[11] Policies should in particular target small- and medium-sized enterprises to foster productive employment and strengthen local industries.

9. Illicit financial flows constitute a drain on resources that could be used for development purposes.[12] It remains vital that effective national and international measures be taken to combat money-laundering and tax evasion. The Committee of Experts on International Cooperation in Tax Matters has enhanced efforts to address tax evasion and to foster relevant information exchange. The Committee is also preparing a manual on transfer pricing to provide practical guidance on this issue to developing countries.

10. Corruption represents an obstacle for domestic resource mobilization and allocation. It is necessary to continue combating corruption at all levels, including through effective legal and judicial systems and enhanced transparency. An important international legal instrument in this regard is the United Nations Convention against Corruption, which entered into force in December 2005 and currently has 152 parties.

11. In the future, substantial resources will need to be mobilized for the transition towards a green economy, as well as to address the impacts of climate change. It is estimated that about 2 per cent of global GDP, or $1.3 trillion, should be spent annually for green technology investments.[13] While a part of this need in developing countries will be covered through external sources, it will also require adjustments in domestic resource generation and allocation and public investment. In addition, for many developing countries a priority is to invest in food security and reduced vulnerability against shocks emanating from global markets.[14]

II. Mobilizing international resources for development: foreign direct investment and other private flows

12. There has been a strong revival in private capital flows to developing countries, following the sharp downturn during the recent global financial and economic crisis. Net private capital flows to developing countries are estimated to have risen from about $325 billion in 2009 to about $392 billion in 2010.[15] Stronger growth and higher interest rates in developing countries have attracted investors, especially when compared with sluggish economic prospects and low interest rates in a number of advanced economies. In addition, developing economies exhibit

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[11] World Bank/International Finance Corporation, *Doing Business 2011: Making a Difference for Entrepreneurs*.

[12] See United Nations Development Programme (UNDP) discussion paper, *Illicit Financial Flows from the Least Developed Countries: 1990-2008*, May 2011.

[13] United Nations Environment Programme (UNEP), *Towards a Green Economy: Pathways to Sustainable Development and Poverty Eradication*, 2011.

[14] *World Economic Situation and Prospects as of mid-2011*.

[15] IMF, World Economic Outlook database, April 2011.

favourable risk characteristics, given continuing fiscal and public debt problems in some developed countries, especially in Europe.

13. Foreign direct investment remains a major component of private capital flows to developing countries and is estimated to have amounted to over $300 billion in 2010.[16] While foreign direct investment and other private capital flows have been concentrated in selected developing countries, there are signs of greater diversification. Investment in Africa is significantly higher than a decade ago. Whereas a large portion of these flows continues to go into the natural resource sector and to some commodity-rich countries, the region has also been attracting investments in agriculture[17] and new service sectors. Since 2006, foreign direct investment flows to the least developed countries have been larger than bilateral official development assistance (ODA). Nevertheless, the distribution of foreign direct investment flows among least developed countries remains uneven, with over 80 per cent of the capital going to resource-rich economies in Africa.[18] By contrast, while a far lower share of foreign direct investment has gone to least developed countries in Asia, those investments have tended to flow towards such sectors as telecommunications and electricity.[19]

14. The development impact of foreign direct investment tends to be most pronounced where it forges linkages with the wider local economy. Foreign direct investment has generated positive linkages in Asian least developed countries while its effect has been more limited in Africa. This could relate to its concentration in a few primary sectors in Africa, with limited linkages to the rest of the economy, unlike Asia where it is more diversified.[20] While in the longer term efforts need to be made to diversify investments in Africa, it is also important to have in place appropriate policies and regulation to ensure that foreign investment into the extractive industries is consistent with the broader objectives of sustainable development.

15. While each country is responsible for its tax system, decisions taken in this area, including with the objective of attracting foreign direct investment, can have adverse effects on other countries. In this respect, there remains a need for broader and deeper international cooperation, including in United Nations forums, to minimize harmful tax competition and to stem the resulting loss of tax revenues, particularly in resource-rich nations.

16. In recent years, developing and transition countries have become increasingly important investors and their share in total global foreign direct investment outflows increased from 16 per cent in 2007 to about 29 per cent in 2010.[21] Countries such as Brazil, China, India, the Russian Federation and South Africa have become increasingly significant outward investors. Over two thirds of their investments have

[16] Ibid.

[17] There are concerns that large-scale foreign investments in agriculture will displace small farmers and local food production with adverse impacts on employment and the environment.

[18] IMF, World Economic Outlook database, April 2011. Four mostly natural resource-exporting countries — Angola, Equatorial Guinea, the Sudan and Zambia — received over half of total foreign direct investment in least developed countries.

[19] United Nations Conference on Trade and Development (UNCTAD), *Foreign Direct Investment in LDCs: Lessons Learned from the Decade 2001-2010 and the Way Forward*, May 2011.

[20] Ibid.

[21] UNCTAD, *World Investment Report 2011*.

been directed towards other developing and transition countries and their companies have accounted for a rising share of investment in least developed countries.[22] While the activities of these investors in Africa have mostly focused on the natural resources sector, there are signs of diversification into sectors with higher development impact, such as telecommunications, financial services, infrastructure and tourism. More generally, the scope for beneficial linkages and technology absorption from South-South foreign direct investment is increased by the fact that the technology and skills of developing-country transnational corporations are often closer to those used by firms in host countries. Policymakers should therefore promote South-South investment flows, particularly those with a positive development impact, through greater South-South cooperation.

17. Other components of private capital flows to developing countries, including international bank lending and portfolio investments, have continued to recover following the crisis. A large share of the increase in cross-border lending to emerging markets has been directed towards rapidly growing economies, especially China and Latin America, where Brazil has accounted for a large proportion of international bank loans. Cross-border bank lending nevertheless remains weighed down by continuing financial difficulties faced by advanced-country banks.[23]

18. Portfolio investments also staged a recovery in the aftermath of the crisis and have been directed mainly towards middle-income emerging economies, especially in Asia and Latin America. Equity flows to developing countries were particularly strong in 2010 and stock markets in developing countries have regained much of the value lost during the crisis.[24] Equity issuance rose to historically high levels in some countries, especially Brazil and China, and was buoyant in other emerging economies such as the Republic of Korea and India. The recovery in portfolio debt inflows has also triggered strong issuance of corporate debt in a number of emerging markets, especially in Latin America.[25]

19. Despite its possible contribution to development, the surge in foreign capital may make the domestic financial sector more vulnerable and cause asset price bubbles. Moreover, short-term capital flows are increasing at a time when inflationary pressures are rising in some economies. This may complicate policies to curb inflation, since higher interest rates may attract greater short-term capital flows. The sharp rise in short-term capital inflows is also putting upward pressures on exchange rates, with the potential of adversely affecting the export competitiveness of some countries. There are also concerns that these economies may be vulnerable to sharp reversals in these sources of capital brought about by external developments.

20. Stability risks associated with capital flows have led several emerging economies to introduce measures to contain the negative impact of the surge in short-term capital flows. While the effectiveness of capital controls may vary, it is important that countries have the policy space to employ measures to effectively curb excessive short-term capital inflows in line with article VI of the International Monetary Fund (IMF) Articles of Agreement. More broadly, there is a need for consideration at national, regional and international levels of ways to mitigate the

[22] UNCTAD, *Global Investment Trends Monitor*, 27 April 2011.
[23] Bank for International Settlements, *BIS Quarterly Review*, March 2011.
[24] World Bank, *Global Economic Prospects 2011: Navigating Strong Currents*, January 2011.
[25] IMF, *Global Financial Stability Report*, April 2011.

pro-cyclicality of private capital flows. These include the adoption of countercyclical regulations and instruments, as well as effective supervision of all the sources of systemic risk, including those arising from hedge funds and derivative instruments. Better designed exchange rate systems based on the principle of constant and sustainable real exchange rates of all countries could further reduce the scope for speculative capital flows.

21. Officially recorded remittances to developing countries are estimated to have totalled $325 billion in 2010, representing a year-on-year increase of 6 per cent after a modest decline in 2009.[26] While the largest recipients of remittances in 2010 were India, China, Mexico and the Philippines, they have constituted an important source of income for smaller low-income countries and amounted to more than 20 per cent of GDP in a number of them.[27] The large growth in remittances during the past decade reflects the increase in international migration and better measurement of remittances. It also highlights the increasingly important role of diaspora communities as providers of external finance. Apart from remittances, their contribution has included the provision of equity finance and the facilitation of foreign direct investment and trade linkages. Greater efforts need to be made by both host and home countries to tap the economic potential of diasporas, for example through diaspora bonds, including through providing an enabling legal, regulatory and institutional environment and reducing remittance costs.

III. International trade as an engine for development

22. After a deep decline in 2009, world trade rebounded by almost 12 per cent in 2010 and is expected to grow by about 7 per cent in both 2011 and 2012.[28] Developing countries have been leading the recovery, while trade by developed economies continues to teeter below pre-crisis levels. As a result, the share of developing countries in global trade increased from about one third to more than 40 per cent between 2008 and 2010. However, since mid-2010 world trade growth has lost steam and the short-term outlook is clouded by a number of significant risk factors, including rising prices for food, energy and other primary products, high levels of unemployment and debt crises in developed economies.

23. As a reaction to economic uncertainties, protectionist measures are on the rise. G-20 Governments have introduced more trade barriers between mid-October 2010 and the end of April 2011 than in the previous periods since the financial crisis began. In addition, new import-restrictive measures taken by G-20 economies over the period from October 2010 to April 2011 have doubled to 0.6 per cent of total G-20 imports compared to the previous six months.[29] Greater export restrictions have further increased the total of world trade affected by new restrictions since the crisis began.

24. The global crisis has distracted some of the attention of policymakers from the Doha Round of multilateral trade negotiations, which was launched a decade ago by the World Trade Organization (WTO). As part of their continued efforts to work

[26] However, the local currency value is smaller owing to United States dollar depreciation.

[27] World Bank, *Outlook for Remittance Flows 2011-12*, Migration and Development Brief No. 13, 8 November 2010.

[28] *World economic situation and prospects as of mid-2011* (E/2011/113).

[29] OECD/UNCTAD, *Fifth Report on G-20 Investment Measures*, 24 May 2011.

towards a balanced, development-oriented and far-reaching outcome of the Doha Round, WTO members should pay particular heed to key issues of special interest to developing countries, particularly those contained in the Monterrey Consensus. However, despite several attempts, progress has been slow on these issues, especially in the areas of agriculture, non-agricultural market access and services and special and differential treatment for developing countries.

25. In addition, agricultural subsidies, particularly those on rice, sugar and cotton, continue to pose economic burdens on developing countries. Overall, developed-country support to agricultural production experienced the first increase after five years in 2009 and now totals $253 billion.[30] Disconcertingly, the most distorting forms of support accounted for more than half of those measures.[31] While tariff levels and structures remain a barrier to trade in many sectors, non-tariff measures are proliferating as well. More progress is therefore needed to ensure that regulations, standards, testing and certification procedures do not create unnecessary trade obstacles.

26. In the absence of significant progress of multilateral trade negotiations, regional, bilateral and plurilateral trading arrangements continue to proliferate. More than half of world trade is subject to multiple preferential arrangements. Of the almost 300 preferential trade agreements currently in force, about half have come into effect since 2000. While regional integration and bilateral trade have been important elements of the multilateral trading system, they tend to discriminate against other trading partners by eroding the most favoured nation principle. Furthermore, deeper and broader commitments than those taken within the context of the multilateral trading regime of WTO have made it difficult for many developing countries to utilize policy space, a constraint which is evidenced by the large gap between WTO bound and applied tariff rates.[32]

27. Despite the growing role of developing countries in world trade, the share of least developed countries in global trade has remained constant at 0.33 per cent (excluding oil) since the adoption of the Monterrey Consensus.[33] The 2010 Millennium Development Goals Summit reiterated the call for duty-free and quota-free access for least developed countries by 2015. While most countries offer import concessions to least developed countries, the proportion of the latter's global exports that actually enter markets duty-free and quota-free is in some cases as little as 50 per cent.[34] Duties on imports from least developed countries still amount to almost as much as duties saved through special non-reciprocal preferences for those countries.[35] Greater coverage for products of commercial interest to least developed countries and simplified rules of origin could substantially strengthen the development impact of duty-free and quota-free market access. Yet, important market access measures of benefit to least developed countries remain blocked within the Doha Round, essentially because of policy disagreements between developed and emerging economies on other matters.

[30] OECD, *Agricultural Policies in OECD Countries 2010*, p. 5.

[31] Ibid.

[32] UNCTAD, *LDC Report 2010*, p. 183.

[33] Ibid., p. 90.

[34] "An 'Early Harvest' not so 'early' after all", UNCTAD Policy Brief No. 20/B, April 2011.

[35] International Trade Centre (ITC), "Market access, transparency and fairness in global trade-export impact for good 2010".

28. Least developed countries have called for an "early harvest"[36] on the implementation of the provisions of the WTO Hong Kong Ministerial Declaration concerning duty-free and quota-free access for all products originating from all least developed countries.[37] Critical elements of an early harvest also include a waiver to accelerate services exports from least developed countries, preferential and more favourable treatment to services and service suppliers and the elimination of trade-distorting support measures for cotton. Efforts are currently under way to reach such a first-step Doha Round outcome at the December 2011 Ministerial Conference in Geneva. At the same time, it is important to address potential adjustment challenges, as extending product coverage to 100 per cent will lead to an erosion of trade preferences for some least developed countries.

29. Least developed countries feature limited productive capacities, which constrain their ability to diversify their economies and increase their exposure to international price shocks. While commodity exchanges have the potential to reduce this type of volatility by facilitating price discovery and the transfer of risk, their increasing "financialization" has threatened to undermine their hedging potential. Financial investments have caused price shifts that are unrelated to the relative scarcity of primary commodities. As a result, increased transaction costs have reduced the affordability of hedging for many developing countries.

30. Concerted measures and actions will be needed to support efforts by least developed countries to reduce commodity dependence, including through the diversification of their export base, and to mitigate the adverse effects of commodity price volatility. This includes helping developing countries to enter vertically integrated production chains, as well as increase the value added involved in their participation in global value chains.

31. Total aid for trade grew to $40.1 billion in 2009.[38] Well-targeted and country-owned support measures can help develop trade-related skills, build trade-related infrastructure and promote measures for product diversification. These types of strategically integrated trade support measures are of particular benefit to least developed countries, whose export portfolios are typically not diversified. Aid targeted at very specific constraints, such as the Standards and Trade Development Facility projects for building capacity in the area of food safety, plant and animal health, can also be particularly beneficial to least developed countries.

32. Recent increases of aid for trade directed to least developed countries have been encouraging. Commitments rose from $5.2 billion in 2002 to $12.1 billion in 2009. Yet, the distribution of aid for trade remains skewed, as two thirds of the assistance goes to only 10 least developed countries. In this context, the 2011 Istanbul Programme of Action (A/CONF.219/3/Rev.1) has called for development partners to implement effective trade-related technical assistance and capacity-building to least developed countries on a priority basis, including by enhancing the share of assistance to least developed countries for aid for trade and support for the Enhanced Integrated Framework. Given the economic vulnerability of least developed countries, new aid for trade commitments should be predictable, mostly grant-based and additional to existing ODA commitments. Trade finance

[36] See the Dar es Salaam Declaration adopted at the Sixth LDC Trade Ministers' Meeting, held in Dar es Salaam from 14 to 16 October 2009 (WTO document WT/MIN(09)/2).

[37] WTO document WT/MIN(05)/DEC, decision 36 of annex F.

[38] WTO/OECD, *Aid for trade to the LDCs. Starting to show results*, 2011, p. 9.

programmes should also be available to reduce transaction costs and ensure stability to exporters.

IV. Increasing international financial and technical cooperation for development

33. Despite increases in aid flows to developing countries, aid delivery fell short of commitments. In 2010, net ODA from member countries of the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD) reached a record level of $129 billion, representing 0.32 per cent of DAC members' combined gross national income (GNI). This represents considerable progress from the 2001 aid level (i.e. $53 billion or 0.22 per cent of GNI).[39] However, net ODA/GNI ratios of many larger donors remain below the United Nations target of 0.7 per cent, while five countries (Denmark, Luxembourg, the Netherlands, Norway and Sweden) exceed that target. Global aid delivery also fell $21 billion short of the $50 billion increase pledged for 2010 at the 2005 Gleneagles Group of Eight Summit.[40] Moreover, the Group of Eight did not deliver on its promise to increase aid to Africa by $25 billion (in 2004 prices). With aid delivery to Africa estimated at $46 billion in 2010 (or $40 billion in 2004 prices), the delivery gap is projected to be $18 billion (or $15 billion in 2004 prices).[41] At the same time, South-South cooperation increased from $1.9 billion in 2005 to $4.6 billion in 2009.[42] Moreover, two thirds of DAC donors have become involved in triangular cooperation.

34. From 2000 to 2009, the DAC member countries' ODA to least developed countries rose from 0.05 per cent (or $12 billion) of aggregated GNI to 0.10 per cent (or $37 billion).[43] Yet, this level of ODA is still well below the target of 0.15-0.20 per cent by 2015. Moreover, while country programmable aid[44] to the majority of least developed countries is projected to increase by a total of $3.1 billion from 2009 to 2012, 13 countries are likely to face a reduction of $0.8 billion, with virtually no growth projected for 2012.[45] The 2010 Millennium Development Goals Summit reiterated the critical importance of fulfilling all ODA commitments and encouraged all donors to establish timetables to reach their goals.[46] Likewise, the Istanbul Programme of Action called upon donor countries to implement their ODA commitments by 2015 and consider further enhancing the resources for least developed countries.[47]

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[39] OECD aggregate aid statistics database, "ODA by donor" (available from http://stats.oecd.org).

[40] United Nations, *The Millennium Development Goals Report 2011*, chap. II.

[41] Ibid.

[42] Calculation based on OECD "Statistics on resource flows to developing countries", 23 December 2010, table 33.

[43] Ibid., table 31.

[44] Country programmable aid is the portion of aid that each donor can programme for each recipient country, thus reflecting more predictable flows of aid that are available for recipient country planning and spending according to national priorities.

[45] Economic and Social Council Development Cooperation Forum, "Background study for the 2012 Development Cooperation Forum: Trends in international financial cooperation for LDCs", 29 April 2011.

[46] General Assembly resolution 65/1, para. 78 (f).

[47] A/CONF.219/3/Rev.1, para. 116.2.

35. A large share of aid continues to be allocated to social infrastructure and services. In 2009, DAC members' aggregated commitments to this sector accounted for 43 per cent of total commitments, compared to 32 per cent in 2000.[48] Aid to productive sectors represented only 8 per cent of DAC commitments in 2009.[49] The Istanbul Programme of Action requests development partners to focus aid to least developed countries on productive capacity development. In addition, to enhance agricultural productivity and sustainability in developing countries, the Millennium Development Goals Summit stressed the need for directing more aid to agriculture.

36. The concentration of aid in a limited number of developing countries has not changed in the past decade. The top 20 of around 150 DAC ODA recipients received 40 per cent of the total annual average ODA in both 1990-1999 and 2000-2009.[50] To avoid over-concentration of aid, the allocation of aid requires further improvement on the basis of recipients' needs and consideration of vulnerabilities. Although some least developed countries are included in the top 20 aid recipients, they have not received a greater share of ODA than other developing countries.

37. Further advances have been made in increasing the grant element of total ODA commitments. Grants as a share of ODA increased from 94 per cent in 1998-1999 to 96 per cent in 2008-2009. Progress has been slower, however, in the areas of untied aid, donor coordination and appropriate financial support in post-conflict situations.[51] Likewise, further progress is needed to improve aid predictability, especially medium-term predictability and aid transparency.[52] More donor information on multi-year spending intentions would help facilitate better forward planning by recipient countries. Greater aid coordination and harmonization would help avoid further fragmentation and duplication of donor programmes.

38. There is a need to further strengthen the follow-up to commitments on development cooperation by improving existing global monitoring and evaluation mechanisms and exploring new modalities, such as international peer reviews. The Fourth High-Level Forum on Aid Effectiveness, to be held in Busan, Republic of Korea from 29 November to 1 December 2011, and the 2012 Economic and Social Council Development Cooperation Forum will provide important opportunities to reassess the aid effectiveness agenda.

39. Aid flows to fragile and conflict-affected countries have been more volatile than those to other countries, despite their greater need for sustainable and predictable aid. Volatility in development assistance reduces aid effectiveness. Furthermore, donors often undertake small short-term projects implemented through systems parallel to national institutions and thus important opportunities for institution-building are missed.[53] In the Dili Declaration, the representatives of the g7+ addressed these and other challenges in peacebuilding and State-building and called for improved aid delivery systems in support of a transition towards Government-led delivery through country systems.[54]

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[48] OECD aggregate aid statistics database, "ODA by sector" (available from http://stats.oecd.org).

[49] Ibid.

[50] *OECD, Development aid at a glance, statistics by region: 1. Developing countries, 2011 edition* (www.oecd.org/dataoecd/59/5/42139479.pdf), table 1.2.9.

[51] United Nations, *The Millennium Development Goals Report 2011*, chap. II.

[52] See also International Aid Transparency Initiative.

[53] World Bank, *World Development Report 2011: Conflict, Security, and Development*.

[54] "Dili Declaration: a new vision for peacebuilding and statebuilding", 10 April 2010 (www.oecd.org/dataoecd/12/30/44927821.pdf).

40. Innovative financing mechanisms are estimated to have generated $37 billion in revenues for climate change and environment, mostly from carbon emission trading. Given the tremendous financing needs of developing countries in these sectors, these initiatives should be further explored and, where appropriate, expanded. Moreover, it is important to ensure that least developed countries, with relatively low levels of emissions, are not by-passed by these mechanisms.[55] Since these financial and investment flows mostly come from private sources, they are considered additional to existing ODA.[56] However, the extent of "additionality" of innovative financing to traditional sources of development finance in other sectors is much lower. For example, in the health sector, with the largest number of operational mechanisms, only $0.2 billion of the total estimated revenues of $5.5 billion raised by selected mechanisms in 2002-2010 was reported as "additional" to ODA, based on OECD classification.[57]

41. The Leading Group on Innovative Financing for Development recently identified a centrally collected multicurrency transaction tax as the most appropriate mechanism to fund global public goods, with the potential to raise $25-34 billion annually (at the rate of 0.005 per cent).[58] Financial transaction taxes were also examined by the Secretary-General's High-level Advisory Group on Climate Change Financing as a potential mechanism to finance the Copenhagen Accord commitments.[59] A further step would be to devise appropriate modalities to manage these resources. Recognizing the development potential of innovative sources of finance, the General Assembly decided to convene at its sixty-sixth session a separate meeting of the Second Committee to consider the question of innovative mechanisms of financing for development.[60]

V. External debt

42. Debt indicators improved in many developing countries in 2010, despite an increase in nominal external debt of 8 per cent, thanks to a recovery in growth and exports.[61] The ratio of external debt to GDP decreased from 23.7 per cent in 2009 to 21.6 per cent in 2010. Estimates for the ratio of external debt service to exports of goods and services for 2010 also show a return to pre-crisis levels for all income groups, reaching 6.5 per cent in low-income countries, 19 per cent in lower-middle-income countries and 35 per cent in upper-middle-income countries.[62] However, there is considerable divergence across regions and countries. For example, debt levels in the Caribbean continued to deteriorate and the debt service ratio reached

[55] World Bank, *Carbon Finance at the World Bank. 10 years of Experience in Carbon Finance: Insights from working with the Kyoto mechanisms*, 2010.

[56] OECD Working Party on Statistics, "Mapping of some important innovative finance for development mechanisms" (OECD document DCD/DAC/STAT/RD(2011)1/RD1), 7 February 2011.

[57] Ibid.

[58] Leading Group on Innovative Financing for Development, *Globalizing Solidarity: the Case for Financial Levies, Report of the Committee of Experts to the Taskforce on International Financial Transactions for Development*, Paris, 2010.

[59] United Nations, *Report of the Secretary-General's High-level Advisory Group on Climate Change Financing*, 5 November 2010.

[60] General Assembly resolution 65/146.

[61] IMF, *World Economic Outlook April 2011*, table B22.

[62] IMF, World Economic Outlook database, April 2011, available from www.imf.org.

17.3 per cent in 2010, up from 11.5 per cent in 2006, while in Southern Asia it stayed around the 19.4 per cent average observed in 2008-2009, as compared to 16.7 per cent in 2007. In Oceania, the increase in debt slightly outpaced the increase in exports.[63] Moreover, across regions, 20 countries remain at high risk of or are already in debt distress.[64]

43. The Heavily Indebted Poor Countries Initiative, together with the Multilateral Debt Relief Initiative, had reduced the debt of 36 post-decision-point heavily indebted poor countries[65] by over 80 per cent by the end of 2010.[66] From 1999 to 2010, the aggregated debt-service payments of the 36 post-decision-point countries fell from 18 per cent of exports to 3 per cent and the present value of debt to GDP declined from 114 per cent to 19 per cent. The fiscal space created by the reduced debt burden has been used in part to increase spending for poverty reduction. Related expenditures were projected to have increased from 44 per cent of revenue in 2001 to 57 per cent of revenue in 2010.[67]

44. The rise in public expenditure and decreased revenue resulting from the global crisis increased fiscal deficits, partly financed through rising domestic debt, to 3.7 per cent of GDP for low-income countries and 4.5 per cent for middle-income countries in 2009. Owing to the economic recovery, however, fiscal deficits decreased slightly in 2010 to 3.6 per cent and 3.7 per cent in low- and lower-middle-income countries, respectively. Upper-middle-income countries have not yet recovered the surplus they exhibited until 2008, with a deficit of 3 per cent of GDP in 2010, compared to a surplus of 1 per cent in 2006-2008.

45. High public debt-to-GDP ratios in many developing countries can be a cause for concern, particularly for countries with external vulnerabilities. Sixty countries featured public debt-to-GDP ratios over 40 per cent in 2010 (17 low-income countries, 22 lower-middle-income and 21 upper-middle-income countries).[68] In order to better assess the implications of such high levels of public debt, vulnerability indicators need to be refined further and incorporate other closely related factors, such as the composition and the maturity structure of debt, purpose of loans, the level of interest rates, inflation, growth prospects and the potential for external shocks.

46. Spillover effects from the European debt crisis and other risk factors, such as volatile energy and food prices and exchange-rate instability, could significantly affect the outlook for debt sustainability in many developing countries and emerging economies. The prospects of economic growth in developed countries, and thus global demand, are also expected to be affected by the deleveraging of the sizeable public and private debts in those countries, affecting the prospects for developing countries through the real economy. The policy response in Europe has been to bail out the affected countries with official resources and recently some "bail-ins" by the

[63] Ibid. Discrepancies exist between World Bank and IMF databases.

[64] IMF, "List of LIC DSAs for PRGT-Eligible Countries, As of August 4, 2011" (www.imf.org/external/pubs/ft/dsa/dsalist.pdf).

[65] The number of Multilateral Debt Relief Initiative beneficiary countries is 32, excluding 4 interim heavily indebted poor countries.

[66] World Bank, "HIPC At-A-Glance Guide (Spring 2011)".

[67] International Development Association and IMF, "HIPC Initiative and MDRI — Status of Implementation", 14 September 2010.

[68] Based on IMF World Economic Outlook database, April 2011.

private sector. The subsequent lack of confidence of the private sector highlights the challenges and limited efficacy of crisis management without a clear set of principles and procedures. The absence of an efficient and fair debt restructuring mechanism makes resolving debt problems an arduous and costly process. The practical options going forward to enhance the financial architecture for debt restructuring could be discussed at the United Nations, with the participation of all relevant stakeholders from the official and private sectors.

47. Debt-related flows to emerging economies and developing countries increased in 2010, reaching $373 billion after the sharp decrease in 2008-09. Borrowing from banks, and especially from other private creditors, recovered from the steep decline observed in 2008-09, while medium- and long-term financing from official creditors decreased from 48 per cent of debt-related flows in 2009 to 16 per cent, similar to the 15 per cent observed in 2008.[69]

48. The share of Government creditors that are members of the Paris Club in total debt has become relatively small owing to increased borrowing from multilateral, private sector and emerging market creditors and earlier debt reduction operations provided by the Paris Club. Paris Club lenders accounted for 20 per cent and 13 per cent of the debt for low- and lower-middle-income countries in 2009, while their share for upper-middle-income countries was only 2 per cent.[70] Since flows from non-Paris Club creditors are on the rise, new modalities may be needed to deal with problems in debt owed by emerging economies and developing countries to non-Paris Club creditors.

49. In addition, the growing importance of private debt in total external debt poses new challenges for the Paris Club, which requires its debtors to seek comparable treatment from other creditors, including private creditors. The legal basis for private and official non-Paris Club creditors to provide treatment comparable to that of the Paris Club is weak and non-binding. There are also issues related to transparency and efficiency of the process, such as problems in debt data reconciliation and the interest rate at which debt reschedulings are carried out. There are also possible conflicts of interest between the role of IMF as a preferential creditor in official debt restructuring on the one hand and its role in assessing the financing gap to be filled by the Paris Club on the other.

50. The main debt sustainability monitoring instruments — the joint World Bank-IMF Debt Sustainability Framework for low-income countries and the IMF Debt Sustainability Analysis for market access countries — are currently under review. In this connection, it is crucial that the total liability structure of public and private debt, domestic and external, including contingent liabilities in the financial sector, as well as the purpose and cost-benefit analysis of loans, be taken into account when gauging debt sustainability. Further measures should be taken to improve the data availability and reliability for these liabilities in reporting procedures. Debt problems often occur due to natural disasters, international financial volatility and other exogenous shocks, despite good policies and debt management. Structural vulnerabilities to shocks can therefore be as important as policy and institutional quality, which are the main factors accounted for in the current World Bank-IMF debt sustainability frameworks. Further technical work at the inter-agency level

[69] IMF, *World Economic Outlook April 2011*, table B18.

[70] Paris Club website (www.clubdeparis.org) and IMF, *World Economic Outlook April 2011*.

could play a useful role in enhancing the analysis and effectiveness of these frameworks.

VI. Addressing systemic issues: enhancing the coherence and consistency of the international monetary, financial and trading systems in support of development

51. The international community has continued its efforts to reform the international monetary and financial system in the key areas of financial regulation and supervision, multilateral surveillance and macroeconomic policy coordination, sovereign debt, global financial safety net and the international reserve system.[71] The issue of international financial stability has increasingly been viewed in the context of reforming the mechanisms of global economic governance. The challenge is to enable the international community to respond to global risks in a more coherent, effective and cooperative fashion.

52. The Bretton Woods institutions have taken steps to improve their governance structures. The second phase of governance reform of the World Bank, agreed upon in April 2010, foresees a shift in voting power to developing and transition countries, with a commitment to move, over time, towards equitable voting power. The IMF 2008 quota and governance reform entered into force on 3 March 2011. In December 2010, the IMF Board of Governors approved quota and governance reforms under the fourteenth General Review of Quotas. The reforms, which still need to be ratified in order to become effective by the 2012 annual meetings, will double member countries' quotas, shift more than 6 per cent of quota shares to developing countries, without lowering the quota shares and voting power of the poorest members, and facilitate the move to a more representative Executive Board. A review of the current quota formula will be conducted by January 2013. Along with the full implementation of the agreed reforms, it is important to continue work on various governance issues, including further improvement of the governance structure, enhancing the diversity of management and staff and developing open, transparent and merit-based selection processes for senior leadership.

53. In response to the financial crisis, a number of international initiatives to reform financial regulation are under way. Important priority areas are the implementation of the Basel III international regulatory framework for banks,[72] new rules for systemically important financial institutions and adequate regulation of the shadow banking system. It is vital to implement new regulations in a globally consistent and development-friendly manner and to discourage attempts to achieve a national competitive advantage in the reform process. Besides regulatory reform, there is a need for a higher degree of international cooperation in financial supervision, as potential systemic risks are mainly a cross-border phenomenon.

54. It is recognized that IMF needs to pay more attention in its surveillance activities to financial sector issues, policy spillovers, especially those coming from systemically important countries and financial centres, and cross-border linkages. In order to strengthen the Fund's global monitoring role, a trial spillover analysis is being conducted for the five major economies. It has also been decided to prepare a

[71] A/66/167.

[72] There are concerns that Basel III may have an adverse impact on trade and development finance.

new consolidated multilateral surveillance report, which will include analysis of potential spillover effects drawing on a wider range of information. Enhancing international coherence and coordination among national economic policies in the interest of improved financial stability and sustainable global growth should become a central objective of the IMF work.

55. It is recognized that economic policy coordination within the G-20 during the crisis was instrumental in averting an even more serious downturn and in setting the stage for recovery. In the aftermath of the crisis, it is critical that macroeconomic policy coordination be sustained, strengthened and institutionalized on the multilateral agenda to ensure robust recovery. However, the informal G-20 process, from which the vast majority of United Nations Member States is excluded, needs to develop greater legitimacy, including through forging stronger institutional linkages with non-member States and universal international bodies such as the United Nations. There is a need for clearer procedures to ensure complementarity of efforts between the G-20, the United Nations and other multilateral organizations.

56. The attainment of balanced and sustainable growth also requires close coordination of macroeconomic policy issues with other areas of global governance, including those related to the multilateral trading system, aid, debt, migration and climate change. No specific procedure for such coordination exists at present and its creation might warrant consideration.

57. In the aftermath of the financial crisis, the issue of the volatility of capital flows to emerging economies has taken a centre stage on the policy agenda. The debate has focused on the question of how to respond to potentially destabilizing capital movements and which policy instruments to use. Complementary options include macroeconomic and prudential policy instruments as well as capital controls. However, measures to deal with capital flows may have multilateral repercussions. Consequently, in the era of financial globalization, there may be a need for internationally agreed principles on the management of cross-border capital flows.

58. IMF is working to develop a framework to help countries deal with large capital inflows.[73] The goal of the framework is to assess policy options for capital flow management and to determine the appropriate circumstances for such measures. Policy advice and cooperation on capital flows should encompass both recipient and originating countries.

59. Rising public debt in developed countries has increasingly been perceived as a major source of instability for the global financial system. To address this issue, there is a need to ensure medium-term fiscal sustainability without destabilizing financial markets. These efforts should be internationally coordinated and well timed in order not to damage recovery prospects. It has also been suggested to develop an international framework for sovereign debt restructuring.

60. The global financial safety net was strengthened during the recent crisis and its aftermath. In particular, IMF credit facilities have been enhanced by modifying the existing Flexible Credit Line and establishing the Precautionary Credit Line. Resources available for IMF lending have increased significantly, including the

[73] IMF, "Recent Experiences in Managing Capital Inflows — Cross-Cutting Themes and Possible Policy Framework", 14 February 2011, and IMF Staff Discussion Note, "Managing Capital Inflows: What Tools to Use?", 5 April 2011.

doubling of quota resources to approximately $750 billion, as yet to be ratified, and expanded borrowing arrangements with member countries and central banks. Despite these initiatives, there is scope for further enhancing international liquidity support. The creation of a multilateral mechanism to provide financing in systemic crises should be kept under consideration. An important element in strengthening the global financial safety net is closer cooperation with regional and subregional mechanisms.

61. The need to explore options for reform of the international monetary system is now broadly accepted. Despite some diversification, the majority of reported international foreign exchange reserves continue to be held in United States dollars.[74] In order to mitigate the flaws of a national currency-based reserve system, there are in particular proposals to strengthen the role of Special Drawing Rights (SDRs). Work is under way at the Fund on the role of this reserve asset.[75] Currently representing less than 4 per cent of total global reserve holdings, SDRs play a very limited role. Realistically, the role of SDRs as a reserve asset can be expected to increase gradually over the coming years in a trend towards a system that combines increased use of SDRs with a range of nationally supplied reserve assets. Progress in this direction will require a number of measures to enhance the acceptance, availability and use of SDRs. It may also require broadening the composition of the SDR basket to make it more representative, in particular by including emerging market currencies.

VII. Staying engaged

62. The special high-level meeting of the Economic and Social Council with the Bretton Woods institutions, the World Trade Organization and the United Nations Conference on Trade and Development was held in New York on 10 and 11 March 2011 on the overall theme of "Coherence, coordination and cooperation on financing for development". The meeting featured four thematic debates: (a) follow-up to the 2010 Millennium Development Goals Summit outcome: building the global partnership for development, including in response to new challenges and emerging issues; (b) the role of the United Nations system in global economic governance; (c) financial support for development efforts of least developed countries: development finance, including innovative mechanisms, aid for trade and debt relief; and (d) financial support for development efforts of middle-income countries: development cooperation, trade, capital flows, policy space and reserve system. The deliberations were summarized in the President's summary of the meeting (A/66/75-E/2011/87).

63. To launch the preparation of the General Assembly's fifth High-level Dialogue on Financing for Development, to be held in New York on 7 and 8 December 2011, the Financing for Development Office of the Department of Economic and Social Affairs of the Secretariat convened an expert group meeting on regional cooperation on financing for development in New York, on 15 and 16 November 2010, which explored the potential of existing and new forms of regional cooperation in

[74] The proportion of United States dollars in global foreign currency reserves, as reported to IMF, has declined by about 10 percentage points over the past decade to a little over 60 per cent (IMF Currency Composition of Official Foreign Exchange Reserves (COFER) database).

[75] IMF, "Enhancing international monetary stability — a role for the SDR?", 7 January 2011.

promoting development finance and macroeconomic cooperation. The Economic Commission for Africa (ECA) held a regional forum entitled "Financing for development: mobilizing resources for economic transformation in Africa" in Addis Ababa from 18 to 20 May 2011 to identify mechanisms to strengthen the capacity of African countries to mobilize more domestic and external resources for development. The Economic and Social Commission for Asia and the Pacific (ESCAP) held its eighth Asia-Pacific Business Forum, on the theme of "Facing challenges, capturing opportunities", in Bangkok on 25 and 26 July 2011 to discuss emerging trade and investment opportunities and promote cooperation and dialogue between the public and private sectors. The Economic Commission for Latin America and the Caribbean (ECLAC) held a regional consultation on financing for development in Santiago on 10 and 11 August 2011 to take stock of emerging needs and strengths of middle-income countries in the new global economic setting and explore innovative financing mechanisms and new arrangements and forms of cooperation in the region.

64. The 2011 substantive session of the Economic and Social Council, under agenda item 6 (a) (Follow-up to the International Conference on Financing for Development), featured panel discussions on "Global economic governance and development: enhancing the coherence and consistency of the international monetary, financial and trading systems" and "Building on Istanbul: financial support for development efforts of least developed countries, including through South-South and triangular cooperation". The Council further adopted a series of resolutions on matters related to financing for development, including (a) "Recovering from the world financial and economic crisis: a Global Jobs Pact"; (b) "Follow-up to the International Conference on Financing for Development"; (c) "Follow-up to the Outcome of the Conference on the World Financial and Economic Crisis and Its Impact on Development: consideration of the possible establishment of an ad hoc panel of experts"; and (d) "Committee of Experts on International Cooperation in Tax Matters". More information is posted at www.un.org/esa/ffd.

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Item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, Christof Heyns, submitted in accordance with General Assembly resolution 65/208 and Human Rights Council resolution 17/5.

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Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions

Summary

In the present report, the international standards relevant to the use of lethal force during arrest are set out. Different models of how countries deal with the issue of lethal force during arrest are identified and discussed. A brief case study deals with the legal framework applicable to targeted killing, where arrest could reasonably have been an option. The point is made that the frameworks established by international law provide sufficient room to deal with serious as well as less serious security threats. Some recommendations are made to ensure greater domestic compliance with the relevant international norms.

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I. The protection of life in the context of arrest

A. Introduction

1. The use of force is sometimes described as the core of policing.[1] A more purposive approach, however, is to view police powers, when used lawfully and appropriately, as key tools in the hands of the State to protect the rights of the public, including their right to life. If these powers are not exercised in accordance with human rights norms, they may place the very rights they are meant to protect in jeopardy. Using lethal force could potentially constitute violations of the right to life and other rights such as physical integrity, dignity and fair trial. Only under closely circumscribed conditions may force, and in particular lethal force, be used by the police and, more broadly speaking, law enforcement officers.[2]

2. The authority of the State to employ lethal force, outside of armed conflict, is limited to the use of such force during law enforcement operations and, in some countries, the imposition of the death penalty. Internationally, the use of capital punishment is in decline. The same is not true for the use of lethal force during police action.

3. Lethal force in the course of law enforcement may occur in the context of arrest, demonstrations and private defence (also called self-defence).[3] "Lethal (or deadly) force" entails force that has the potential, and in some cases is certain, to cause death.[4]

4. The subject of the protection of life during demonstrations, especially as seen against the backdrop of the recent events in North Africa and the Middle East, was dealt with in my last report to the Human Rights Council.[5] The present report explores the way in which human rights law deals with the use of lethal force during arrest. There is of course some measure of overlap between the law relating to peaceful assembly and arrest, not least because the police often seek to arrest demonstrators.

5. The international standards that provide for limitations on the use of lethal force during arrest will be set out. For the purposes of the present report a review was done of the relevant legislation of some 101 countries and territories. Five models of how countries deal with this issue, as reflected in their legislation, are identified and discussed. As will be demonstrated, most of these models do not comply with the relevant international standards. A brief case study deals with the legal framework in relation to targeted killing, where arrest could reasonably have been an option. The report concludes with some recommendations to ensure greater

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[1] Following Egon Bittner, *The functions of the police in modern society* (Chevy Chase, Maryland, National Institute of Mental Health, 1970).

[2] The term "law enforcement officers" is broader than "police". The Code of Conduct for Law Enforcement Officials (see note 23 below) includes (in the commentary on art. 1): "all officers of the law, whether appointed, elected, who exercise police powers, especially the powers of arrest or detention" in the concept "law enforcement officials". What is said in the present report in respect of the police also applies to law enforcement officials in general.

[3] Private defence refers to the defence of oneself or others.

[4] Weapons are often, but not always, involved in the application of lethal force. In most instances firing a gun at someone should be regarded as the exercise of lethal force.

[5] A/HRC/17/28. See also A/61/311.

compliance, as a matter of domestic law and practice, with the international standards.

6. Under discussion in the present report is the situation where the police attempt to effect an arrest for a criminal offence, but the suspect resists such arrest by refusing to cooperate, offering resistance or trying to flee. The report does not deal in a direct way with patently illegal and clandestine activities disguised as arrest, as happens, for example, where the police executes a person and then reconstructs the evidence in such a way that it appears as if there was a shootout in the course of an arrest.

7. The question that underlies the report is not whether the police have the power to defend themselves. It is generally accepted that they have at least the same powers as other members of the public to do so in terms of the rules of private defence. The more pertinent question is whether they have additional powers to use lethal force, also in the context of arrest, because of their role as law enforcers.

8. One of the recurring themes of human rights monitoring and enforcement in the field of extrajudicial, summary or arbitrary executions is the excessive use of force, also in the context of arrest. This issue is regularly dealt with by different United Nations human rights bodies, in respect of countries from all parts of the world, and is given high preference by non-governmental organizations in their work.[6]

9. There are several reasons why the use of lethal force by the police, also in the context of arrest, should be viewed as a matter of the utmost gravity, and be based on a solid ethical and legal framework, the application of which should be constantly reviewed. These include the fundamental nature of the right to life; the irreversible nature of death, and in some cases, disability; the potential of errors of fact and judgement; the possibility that innocent bystanders may be killed or wounded; the effect on the legitimacy of the police and the State; and the trauma suffered by everyone involved — which could include the police officers concerned — when a life is ended through violence.

10. Heavy-handed policing can have far-reaching consequences for society as a whole. An escalation in the use of force by the police may raise the general levels of violence in society. Criminal suspects as well as demonstrators often respond to an escalation of force with greater aggression, and as a result police lives may be placed in jeopardy — the classic downwards spiral. The world has recently witnessed in a number of contexts how the use of lethal force during arrest can be the spark that ignites widespread demonstrations and riots. Police brutality in many cases has a disproportionate impact along racial and class lines and as such can exacerbate social division.

11. Various studies have attempted to identify the drivers of the excessive use of force by the police in general, which also finds application in the context of arrest (sometimes said to result in "atrocity environments"). This includes impunity and a culture of lawlessness; the presence of small or elite police units with operational independence; overly hierarchical police structures and autocratic Governments;

[6] See, for example, Amnesty International, *Annual Report 2011: The state of the world's human rights* (London, 2011). Available from www.amnesty.org/en/annual-report/2011; and Human Rights Watch *World Report 2011: events of 2010* (United States of America, 2011). Available from www.hrw.org/world-report-2011.

alternative power structures to the Government; police codes of silence; reluctance by prosecutors to bring charges against the police; pressure or tacit approval from politicians; a lack of oversight; public consent and encouragement; dangerous public rhetoric (e.g., "war on terror/drugs" and "shoot to kill") in a climate of public fear; corruption; a lack of faith in the criminal justice system; perceptions that the poor or other groups are dangerous; exposure of the police to dangerous persons and places; antagonism or abuse from suspects; intoxication; individual psychological reasons; and uncertainty.[7]

12. Accountability in this context could be hard to establish. Most arrests are made by street-level police officers, who often possess a high level of discretion and operate in a low-visibility environment.[8]

13. The rule of law requires that State power will be exercised through the legal system, and that individuals who are suspected of having committed crimes should as far as possible be brought before a court of law, where their guilt has to be proven to determine how they are to be dealt with, in accordance with their right to a fair trial. However, in some cases the urgency of the situation does not allow such a process to take place, and law enforcement officials are given the power by law to use coercive measures and even in exceptional cases to take life-and-death decisions on the spot.

14. Where police officers are granted the right to take instant decisions on whether to use force against those suspected of a crime, the safeguards of legal processes, such as a right to a fair trial, are bypassed. This should be regarded as highly exceptional. Most States today do not allow executions even after an extensive judicial process. There consequently have to be very good reasons and safeguards if the power to use deadly force is placed in the hands of (sometimes young and inexperienced) police officers. One author has said that this entails making "godlike decisions without godlike wisdom".[9] However one wishes to express it, the potential for abuse is clear.

15. Yet it is difficult to conceive of a State whose police do not have the power to use lethal force under any circumstances. A too restrictive approach — where an accused has the proverbial "right to flee" — can entail a dereliction of the State's duty to protect those within its jurisdiction. It should be kept in mind that law enforcement officials have a legal duty to perform their functions. By virtue of their profession, they have a role to play that differs from that of ordinary members of the public. Not giving the police the proper scope to protect the public and themselves could compromise the safety of the public as well as of the police. A system that is seen as too protective of the rights of suspects is unlikely to be effective in practice and could lead to the circumvention of the law by police officers who may tamper with evidence (for example, by planting weapons on those whom they have shot).

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[7] See, for example, Luis Gabaldón, "Uncertainty and the use of force among Venezuelan police officers", *Crime, Law and Social Change*, vol. 52, No. 2 (August 2009), p. 208; and Jyoti Belur, "Why do the police use deadly force?", *British Journal of Criminology*, vol. 50, No. 2 (2010), p. 324

[8] Joseph Goldstein, "Police discretion not to invoke the criminal process: low-visibility decisions in the administration of justice", *Yale Law Journal*, vol. 69, No. 4 (March 1960), p. 543.

[9] Quoted in Elizabeth Wicks, *The Right to Life and Conflicting Interests* (Oxford, Oxford University Press, 2010), p. 130.

16. The challenge clearly is to find the right balance between being overly permissive and overly restrictive. The starting point is that life should not be taken by the State, and any action that seeks to fall in the narrow confines of exceptions to this rule requires strong motivation. The applicable rules should be defined in a way that can readily be used by police officers to take principled decisions under great pressure.

17. In the recent past, questions about whether the international standards in respect of policing can deal with the security challenges posed by threats such as terrorism have been debated with renewed intensity.

18. A major study conducted in 2009 by the International Commission of Jurists investigated the effect of terrorism and counter-terrorism on human rights. According to the study: "Counter-terrorism laws have frequently in the past (and still today as will be seen) reduced legal safeguards relating to arrest, detention, treatment, and trial in order to provide a supposedly more effective framework to combat terrorism."[10] They emphasized the fact that appropriate measures can be taken within the established international frameworks.

B. International legal framework

1. The right to life

19. The right to life is the foundational, or bedrock human right.[11] The right to life is the quintessential inherent right: a right that everyone has simply because they are human beings. Causing the death of someone does not entail placing a temporary limitation on their right to life but its permanent extinction; it also immediately and forever eliminates such a person's ability to exercise any other rights.

20. Article 6 of the International Covenant on Civil and Political Rights is non-derogable in a time of public emergency;[12] and the prohibition on arbitrary deprivation of life is viewed as part of customary norms jus cogens, implying that it cannot be overridden by other legal norms.[13]

21. Article 3 of the Universal Declaration of Human Rights states that "everyone has the right to life, liberty and security of person", while article 6 (1) of the International Covenant on Civil and Political Rights provides that "every human being has the inherent right to life [which] shall be protected by law [and] no one shall be arbitrarily deprived of his life". Everyone is entitled to protection by the

[10] International Commission of Jurists, *Assessing damage, urging action: report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights*, Geneva, 2009 (*International Commission of Jurists study*), p. 55; see p. 78, "International law does not preclude powers of arrest, detention and interrogation being assigned to intelligence services, subject to the services complying fully with relevant human rights standards. Unfortunately, the Hearings provided ample evidence that such standards are not being met."; and p. 68, "Post 9/11, this study confirms that intelligence agencies around the world have acquired new resources and new powers allowing for increased surveillance, and law enforcement measures (e.g. powers of arrest, detention and interrogation)."

[11] General Comments Nos. 6 and 14 to the International Covenant on Economic, Social and Cultural Rights, see document HRI/GEN/1/Rev.8, pp. 166 and 178, respectively, para. 1.

[12] Article 4 of the International Covenant on Civil and Political Rights.

[13] See, e.g., General Comment No. 24 (HRI/GEN/1/Rev.8), p. 203, para. 10.

State from infringement by other members of society and to respect for this right by agents of the State.

22. At the regional level, the African,[14] Inter-American[15] and Arab[16] human rights instruments recognize protection against "arbitrary" deprivation of life, while the European Convention on Human Rights uses the term "intentionally".[17] The right to life as formulated in the international instruments is not subject to ordinary limitation clauses. Instead, life may not be "arbitrarily" or "intentionally" taken.

23. This brings the exact scope and reach of the right in the spotlight. Under what circumstances, if any, may the right to life be limited by law enforcement officials? Police action that does not comply with these norms will be regarded as an arbitrary, and therefore illegal, deprivation of life.

24. The foundational nature of the right militates against the right to life being limited in order to protect other values.[18] The sanctity of life requires that lives not be taken to protect other rights, such as freedom of expression. On the same basis, lives may also not be sacrificed in the interest of the common good — for example the shooting of a fleeing suspect in order to promote general respect for the law.

25. However, there are circumstances under which the right to life may be limited that do not necessarily undermine the idea of the sanctity of life in the same way as in the cases described above. This occurs in those rare cases where choices have to be made between two or more lives — tragic choices, in the sense that whatever the decision, life will be lost despite it being done to protect life.

26. As will be demonstrated below, international human rights law proceeds from what will be called in the present report the protection of life principle. This principle entails that while life may as a general rule not be sacrificed to protect other values, under closely defined circumstances one life may be taken as a last resort in order to protect another life or lives.

27. This occurs, for example, where a robber threatens someone's life. In those cases where the police — or for that matter the person threatened — have no choice because of the imminence of the threat but to shoot the robber, such action may be considered justified, because the innocent life is prioritized over that of the aggressor. Provided the requirements of proportionality and necessity are met, such conduct will not be considered "arbitrary" or "unlawful".

28. The right to life may consequently resemble an absolute right (such as the prohibition against torture) in the sense that limitations in order to protect other rights and interests are not permissible. However, the right to life is ultimately not an absolute right in that sense, since under certain exceptional circumstances it may be limited in order to protect life.

[14] Article 4 of the African Charter on Human and Peoples' Rights.

[15] Article 4 of the American Convention on Human Rights.

[16] Article 5 of the Arab Charter on Human Rights.

[17] Article 2.

[18] See, however, Wicks (note 9 above) at pp. 194-197, who explores the question of whether there are not exceptions, for example, in respect of the quality of life.

2. International standards regarding the use of deadly force

29. The main elements of the assessment as to whether the limitation of any human right is justified are the questions of whether the infringement of the right is proportional and necessary. These terms are sometimes used interchangeably, or proportionality is understood as encompassing necessity, but here the approach followed by the mandate holder in earlier reports dealing with the use of lethal force will be used: "While the proportionality requirement imposes an absolute ceiling on the permissible level of force based on the threat posed by the suspect to others, the necessity requirement imposes an obligation to minimize the level of force applied regardless of the level of force that would be proportionate."[19]

30. The concept of proportionality entails some form of balancing. In the context of the right to life, this is problematic, because it requires one life to be prioritized over another while the ideal remains that all lives are regarded as being of infinite value, but it appears to be unavoidable in some cases. Proportionality requires that the rights of the person threatened are measured against those of the suspect in an objective way, in the light of the prevailing circumstances at the time when the final decision on the use of lethal force is made. The potential taking of life (that of the suspect) is placed on one side of the scale, and, since the right to life is at stake, only the protection of life (that of the victim and others threatened) will carry any weight on the other.[20] The question is asked whether the importance of averting the danger to the life of the one party (in the example given above, the person who is being robbed or the police officer, or both) outweighs that of preserving the life of the other (the robber). Considerations such as the level of the threat to the lives of the respective parties and the nature of the crime committed (including the level of violence used) have to be assessed as part of this process.

31. Once it has been established that it would be proportional to use lethal force in order to save lives, it has to be determined whether the use of such force is also necessary, in the sense that a lower level of force will not be sufficient to achieve the same objective. Are there not other, less-than-lethal or non-lethal ways in which the aggressor can be restrained, for example, by using force that incapacitates him or her?[21] A graduated application of force should be followed. If possible, warnings should be given and the suspect should be provided with an opportunity to surrender. It should also be asked whether the person cannot be apprehended afterwards (for example, if the identity or address of the suspect is known to the police) without causing undue harm in the meantime.

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[19] See A/61/311, para. 41. See also *Maria Fanny Suárez de Guerrero v. Colombia*, Merits (CCPR/C/15/D/45/1979); Report of the Human Rights Committee (A/37/40), annex XI, view of the Committee adopted on 31 March 1982, para. 13.2; European Court of Human Rights, *Güleç v. Turkey*, Merits and just satisfaction, Application No. 21593/93; *European Human Rights Reports*, vol. 28, p. 121, Judgment of 27 July 1998, para. 65; *Kelly and others v. The United Kingdom*, Application No. 30054/96, Judgment of 4 May 2001, para. 93; Inter-American Court of Human Rights, *Zambrano Vélez and others v. Ecuador*, Merits, reparations and costs, IACHR Series C, No. 166, Judgment of 4 July 2007, para. 77.

[20] See, however, note 32 below, on rape.

[21] However, it has been argued that care should be exercised in requiring officers to shoot for the legs. Because this is seen as less lethal, the decision to shoot may be taken more easily, while such shots often turn out to be lethal. Instead a high threshold should be met before a firearm is used, but once it is used it should be aimed at the centre of mass. See Wicks (note 9 above) at p. 146.

32. In doing the balancing test required to establish proportionality, the question has to be asked how imminent does the threat to the victim have to be to justify the use of lethal force. How wide, so to speak, are the perimeters placed around the lives that are to be protected which, if crossed, justify preventative action? Does a threat count only when it is imminent and at hand as is the normal requirement with private defence, or can this be broadened under certain circumstances in the context of law enforcement operations, so that a future or more remote threat (e.g., where it appears in the context of an arrest that the suspect may in the future again decide to attack someone) can be regarded as a threat to life that justifies the use of lethal force by the police?

33. The ideal posed by the protection of life principle is that only immediate and clear threats to life will be regarded as a justification for the taking of a life. However, in reality some decisions have to be taken under circumstances of uncertainty, including uncertainty about the likelihood that a particular threat will materialize (e.g., a fleeing suspect who has just attacked someone shouts, "I'll be back!"). Uncertainty opens up the opportunity for overreaction and also for wilful abuse. Those who wish to clothe their actions with the legitimacy of the law often define the protected interest as broadly as possible — that is, they draw the perimeters around the lives they are protecting so widely that it includes distant or even fanciful harm.

34. The overriding logic of the situation remains the fact that the police have the power to use lethal force only as an exception to the rule of law, motivated by a need for urgent action in order to avoid an even greater evil. If that rationale disappears, the foundation for the exceptional powers and consequently the powers as such disappear. Later in the present report, the Special Rapporteur will return to some possible approaches in this regard — the future danger and ongoing danger approaches.

35. Also important is that the decision to use lethal force should be taken as closely as possible to the time when that decision is executed, in order to allow for the suspect's autonomy and free will to change his behaviour.[22] Only in the most exceptional cases will it not be required to allow the suspect the opportunity to surrender.

36. The authoritative statements of international law that set out the principles on the use of force by the police are to be found in the Code of Conduct for Law Enforcement Officials[23] (hereafter the Code) and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[24] (hereafter the Basic Principles). The essence of these instruments is reflected in the "protection of life" principle as

[22] See Kremnitzer and others, "The use of lethal force by police", *Criminal Law Quarterly*, vol. 53, No. 1 (2007-2008). In the seminal case of *McCann and others v. United Kingdom*, Judgment, merits and just satisfaction, Series A, No. 324, Application No. 18984/91, and *European Human Rights Reports*, vol. 21, p. 97, Judgment of 27 September 1995, a number of working theses about the conduct of the suspects were conveyed to the soldiers who were supposed to arrest suspected terrorists which made the use of, what turned out to be, unwarranted deadly force almost unavoidable. See also A/65/321.

[23] General Assembly resolution 34/169, annex.

[24] See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990*: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2, chap. I, sect. B).

described above. These principles may be applied in respect of arrest, detention or private defence by law enforcement officials.

37. Article 3 of the Code is brief, limiting the use of force by law enforcement officials to only that which is "strictly necessary" in order to carry out their duties. The commentary included in the Code, however, expands upon this article, posing the standard that the use of force must be "reasonably necessary" and comply with the requirement of "proportionality", and in paragraph (c) sets out the bounds within which firearms are to be used. It states that the use of firearms is an extreme measure and is to be limited to the exceptional circumstances where "a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender". It can be deduced that it is not the fact that someone suspected of having committed a crime stands to be arrested as such that justifies the use of firearms but rather the danger that this person poses to life.

38. The Basic Principles flesh out the provisions set out in the Code. The Basic Principles contain provisions regarding the steps to be employed prior to the use of firearms, including issuing warnings,[25] the conditions to be observed when firearms are used[26] and, in the event that firearms are utilized, steps to be followed subsequent to the use of such force (providing medical assistance and submitting a report).[27]

39. Principle 5 contains provisions requiring that restraint must be exercised so that force is limited to the minimum. Force is to be used as a last resort and the force used must be within the bounds of necessity and proportionality.

40. Principle 7 provides that: "Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law." According to principle 8: "Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles."

41. Principle 9 requires Governments to adopt fairly detailed rules and regulations on the use of firearms by law enforcement officials. It, further, states unequivocally that firearms may be used only in "self-defence or in the defence of others against the imminent threat of death or serious injury". It seems that, in the same way that certainty of death of the attacker is not required in defining lethal force, a threat of serious injury is regarded as grave enough to justify a response with lethal force.

42. The second sentence of principle 9 prohibits the intentional lethal use of firearms except when it is "strictly unavoidable in order to protect life". The point of the last sentence of principle 9 seems to be that where death is a certainty, the standards of proportionality are higher than would otherwise be the case.[28]

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[25] Principle 10.

[26] Principle 5.

[27] Principle 6.

[28] In this context, it is instructive to look at the German Model Act, aimed at assisting the *Länder* with drafting their own legislation, which provides as follows: "The firing of a shot which will, with a probability bordering on a certainty, result in death, is only permissible to avert a present danger to life or a serious infringement of a person's physical integrity" (section 41 (2) of the model draft of a uniform police regulation).

43. It can be surmised from the above that protection of property cannot be invoked as a justification for the use of potentially lethal force unless it is somehow linked to the defence of life (e.g., protecting a hospital or acting in other cases where destruction could endanger lives, as is the case with nuclear plants, etc.).

44. The instruments cited above make it clear that violations of the right to life do not only occur where there is a failure to respect or protect life, but also when proper investigations are not undertaken, and proper accountability does not occur.[29] The onus is on the State, where credible accusations are made that illegal killings have taken place, to conduct effective investigations and ensure accountability.[30] Such investigations are important in order to ensure that excessive force is not used during arrest, but also in order to expose those cases where executions are covered up as law enforcement.

45. Potential forms of accountability include criminal charges (e.g., murder and manslaughter or homicide); civil law liability for damages; other forms of compensation; and internal disciplinary processes that may lead to the censure and even dismissal of officers.[31]

C. Domestic standards

46. It was said above that under international law standards the reason why lethal force may be used during arrest relates not so much to the fact that a crime has been committed, but rather to the danger posed by the suspect, which ties in with the weighing process that lies at the heart of the proportionality requirement. It was argued that the exception to the rule of law and fair trial requirements (in terms of which the fate of a suspect has to be determined by a court), which allows the use of lethal force by the police in the case of arrest, is triggered by the suspicion that a crime has been committed, or the threat of serious violence. The accused has, forcibly — that is, through his own use of force — caused a situation where the ordinary rules of the legal process cannot be followed.

47. On the domestic level, the key consideration has traditionally been the seriousness of the crime committed by the suspect and this consideration remains important, but as will be made clear, this serves largely as an indication (and not necessarily a good one at that) of the danger posed by the suspect.[32] Domestic law increasingly also focuses on objective indicators of the danger posed by suspects, which fit in better with the "protection of life" principle.

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[29] *McCann* (note 22 above), para. 161; *Ergi v. Turkey*, 40/1993/435/514, Council of Europe: European Court of Human Rights, Judgment of 28 July 1998, para. 86; *Case of the Street Children (Villagrán Morales and others) v. Guatemala*, Merits, IACHR Series C, No. 63, Inter-American Court of Human Rights, Judgment of 19 November 1999, para. 139.

[30] The European Court of Human Rights has held that States have to investigate not only excessive use of force but also alleged racist motives of killings. *Nachova and others v. Bulgaria*, Merits and just satisfaction, Application Nos. 43577/98, 43579/98, Judgment of 6 July 2005, para. 77.

[31] See *Baboeram-Adhin and others v. Suriname*, Merits (CCPR/C/24/D/146/1983); Report of the Human Rights Committee (A/40/40), annex X, views of the Committee adopted on 4 April 1985, para. 16.

[32] "Serious violent crime" clearly includes crimes such as murder, but the question could be asked whether rape necessarily threatens life, and consequently whether it could be a basis for the use of deadly force. It has been argued that rape dehumanizes people, which is akin to their losing their lives, and as such, should qualify in some cases. See Wicks (note 9 above), at p. 129.

48. The terms "proportionality" and "necessity" are typically used on the international level, while both these terms as well as the term "reasonable" (in some, but not all, instances to encompass both proportionality and necessity) are often used on the domestic level. One of the challenges is to make sure that the concept of reasonableness is not used in ways that pose lower standards than those posed by proportionality and necessity.

49. Arrest literally means "to stop, come to a stand, halt" and is one tool at the disposal of the police to bring a suspect to trial. It can also serve the purpose of preventing crimes or permitting investigations.[33] Punishment falls outside the remit of the police and cannot be the motivation for arrest or the use of force.

50. Where a suspect tries to avoid arrest, most of the legal systems studied recognize that if the suspect places lives in immediate danger, lethal force may at some point be used by the police. However, the police in most systems also have powers which exceed that which private defence affords ordinary members of the public, based on their duty to protect the public. It has been held in a number of seminal cases that the mere fact that a criminal suspect will otherwise get away is not a sufficient justification to shoot.[34]

51. A review of the legislation of some 101 legal systems was done for the present report. It was found that several alternatives of how legal systems deal with the use of such lethal force during arrest by the police present themselves on a continuum, ranging from the overly permissive to the restrictive.

52. At least five models may be distinguished, in terms of the kind of defence or justification that they offer, in the legislation studied (and in some cases in the case law or common law, although a comprehensive investigation of those sources of law fall outside the scope of the report). The dominant features of each of the five models will now be set out, and the extent to which they comply with the international norms will then be discussed.

53. In some countries (mostly those influenced by the Common Law system), "fleeing felons" may be shot in the context of arrest (model 1). Felonies used to be violent crimes for which the death penalty could be imposed, but over time other less serious crimes were also classified as felonies, resulting in a situation where non-violent crimes could also justify the shooting of a fleeing suspect.[35] A similar approach is followed in countries where a number of crimes, whether they involve violence or not, are listed in a schedule to an act that allows the police to shoot those suspected of having committed these crimes, if they are unable to arrest them by other means. Since the protection of life is not required under this model, such systems are clearly not in conformity with international standards.

54. The legislative provisions of another group of countries provide that lethal force may be used only where the crime concerned has involved serious violence, or

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[33] There is some disagreement on this point. However, prosecution does not always follow from arrest.

[34] The leading case in this regard is United States Supreme Court, *Tennessee v. Garner*, 471 U.S. 1 (1985) No. 83-1035. See also the South African case *Ex Parte Minister of Safety and Security and Others: In Re: S v. Walters and Another, Butterworths Constitutional Law Reports*, vol. 7 (2002), p. 663 (Constitutional Court).

[35] See J. Simon, "*Tennessee v. Garner*: The fleeing felon rule", *Saint Louis University Law Journal*, vol. 30 (1985-1986), p. 1264.

at least the threat of serious violence, which is a sufficient condition for the use of lethal force (model 2). In a bow to the "protection of life" principle, a presumption is in effect created. The fact of the earlier violence serves as a proxy to support the conclusion that the suspect poses a future danger. By committing such a serious crime, so the argument goes, the suspect has crossed a certain threshold and has shown an absence of restraint from engaging in serious violence.

55. This approach, although an improvement on its predecessors, still circumvents the proportionality test in an unsatisfactory way. It may be true that most fleeing suspects who have committed serious crimes in the past constitute a future danger to other people, but this clearly does not apply in respect of everyone in that position. The presumption cannot be irrefutable. There is, for example, little reason to believe that someone who has committed an isolated crime of passion against a particular individual and is on the run necessarily constitutes a danger to society as a whole. A first-time robber who throws his gun away as he is fleeing will probably be in the same position. This model also falls outside the realm of the international standards.

56. Another approach followed by some countries, which is closer to the international norms, is to require the arrestor to have a reasonable belief that the suspect poses harm before lethal force may be used, but not to pose any requirements in respect of the seriousness of the original offence (this will be listed as model 4; model 3 combines models 2 and 4, and will be described immediately hereafter). Such an approach poses a high threshold in the sense that the arrestor, who often has to take a split-second decision, may be required in a subsequent court case to bring evidence that he or she has made a fairly complicated risk assessment, and if the decision is wrong, he or she could face serious consequences. However, this model places a police officer in a position where he or she has to take life-or-death decisions, where the threshold requirement that a crime involving (the threat of) serious violence must have been committed, has not been met. Such an approach runs the danger of undermining the notions of the rule of law and fair trial, discussed earlier.

57. A less demanding category (ranking with, or arguably even below, the "violent crime" approach of model 2) may now be introduced, in terms of which a violent crime or danger is required — either will do (this will be ranked as model 3).

58. The most stringent approach is to require the commission of a crime involving (the threat of) serious violence as well as proof that the suspect constitutes a threat (model 5). Under this model, the commission of a crime involving (the threat of) serious violence is a necessary, but not a sufficient, condition for the use of lethal force. The fact that the person who flees is suspected of having been involved in a crime of serious violence or a threat thereof is only the first hurdle — then the second (and, as we have seen, not insignificant) hurdle, that of posing a threat, also has to be cleared. This model — depending on how the question whether the suspect poses a threat of violence is interpreted, which will be discussed below — comes closest to being in conformity with the requirements of the rule of law and meeting the "protection of life" principle that underlies the international standards.

59. Based on the above exposition, the following models of the kind of justification or defence that may be provided for the use of lethal force may be identified, in order of increasing restriction:

1. Any felony (no other requirement posed)

2. Violent crime (only)

3. Violent crime or danger (meeting either requirement will do)

4. Danger (only)

5. Violent crime and danger (both are required)

60. This necessitates a consideration of the question of how the danger or harm that the fleeing suspect poses in model 5 (or models 3 and 4) has to be assessed. How close or immediate does the threat have to be to fall within the scope of the "protection of life" principle? Different approaches are followed, but a useful distinction can be made between a suspect who poses a "future danger" and one who presents an "ongoing" threat.[36] An ongoing threat is posed by suspects in respect of whom there is a high probability of immediate harm to specified or unspecified individuals. They are obviously highly dangerous and the danger could be realized at any moment. This may be the case with serial killers, someone on an unfocused revenge spree, some members of violent gangs or those who are fleeing from acts of terrorism.[37]

61. A future danger does not have such a continuous character — it may or may not recur in the near future, as is the case with most robberies. Clearly, allowing the use of lethal force only against an ongoing threat in the context of arrest is easier to reconcile with the ideal of a clear and imminent threat as posed by the "protection of life" principle, than would be the case with a future danger, and the former constitutes the preferred option.

62. The discussion so far has largely centred on proportionality, as supplemented by necessity. In the legislation of a number of countries, however, proportionality is not required or plays a minimal role. Instead, the focus is purely on necessity. The only question asked is whether the least harmful means available to stop the suspect are used. For example, did the police try to shoot at the legs, were warnings given and what kinds of weapons were used? These are valid considerations, but incomplete because proportionality is not addressed. The question is not asked whether the level of force used is justified in the first place.

63. There are legal systems where the use of lethal force (or for that matter, force in general) is not formally regulated by law, or very minimally so. In some cases the requirement of "reasonableness" is merely posed, without a clear definition of the term, whether in legislation or in the jurisprudence of the courts. A more widespread and equally worrying situation, alluded to earlier, is where there are formal legal provisions in place, which in some cases purport to be highly protective of the right to life, but, for a variety of reasons, they are not enforced or only partially enforced, or even used as a ruse to hide plainly illegal activity.

64. A question mentioned at the outset is whether citizens should have the same powers as the police to use lethal force. Citizens are entitled to protect their lives through private defence, which can be used if they are attacked while affecting a citizen's arrest. However, they do not have the same law enforcement duties as the police, and they do not have the same training and organizational accountability. In short, they do not play the same role as the police. As a result the same

[36] See Kremnitzer (note 22 above), at p. 92.

[37] See Gabriella Blum and Philip Heyman, "Law and Policy of Targeted Killing", *Harvard National Security Journal*, vol. 1 (June 2010), p. 161.

considerations do not apply that justify granting them the power to use lethal force beyond what is offered by private defence.[38]

D. Targeted killings

65. The issue of the use of lethal force and arrest also comes to the fore in the context of the increased use of targeted killing, as it manifests itself in practices such as drone strikes and raids (including, for example, the killing of Osama Bin Laden in Pakistan by forces of the United States of America).[39] In respect of the latter case, at least some of the information available suggests that the objective was to kill, not to capture, Bin Laden.[40]

66. In the context of the mandate, targeted killing has been defined as the intentional and deliberate use of lethal force, "with a degree of pre-meditation, against an individual or individuals specifically identified in advance by the perpetrator".[41]

67. Without commenting on the full range of issues surrounding the legality of such operations, including those related to matters such as sovereignty, the present report addresses the question as to what extent a decision that is taken in advance that rules out the possibility of offering or accepting an opportunity to surrender render such operations unlawful.

68. Much will turn on the applicable system of law. If the targeting occurs in the context of law enforcement, international human rights law applies exclusively. If it takes place during armed conflict, international human rights law remains applicable; however, international humanitarian law finds application as lex specialis.[42]

69. While both systems of law allow the use of lethal force by State agents under certain circumstances, the approaches followed are very different. In the case of international human rights law, the use of deadly force is regarded as exceptional, and is legal only in the limited set of circumstances applicable to law enforcement situations described in the rest of the report. International humanitarian law is generally more permissive with regard to the use of lethal force; however, for such force to be used lawfully, various rules have to be complied with, as will be discussed below.

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[38] The legislation of the 13 countries studied allows for civil arrest, although in most cases civilians are only allowed to assist the police with arrest.

[39] See A/65/873-S/2011/381, para. 22; S/2011/120, para. 35; Mary Ellen O'Connell, "Unlawful killing with combat drones: a case study of Pakistan", *Notre Dame Law School Legal Studies Research Paper No. 09-43* (2004-2009), p. 21. See also the comments of the Legal Advisor to the United States Department of State, Harold Koh, "The lawfulness of the U.S. operation against Osama bin Laden", at http://opiniojuris.org/2011/05/19/the-lawfulness-of-the-us-operation-against-osama-bin-laden/.

[40] See, for example, the comments by United States Attorney General, Eric Holder: "The reality is, we will be reading *Miranda* rights to a corpse" in *The Washington Post* article "If bin Laden is found, he'll be killed, Holder says", at http://www.washingtonpost.com/wp-dyn/content/article/2010/03/16/AR2010031603753.html.

[41] See A/HRC/14/24/Add.6, para. 9.

[42] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, para. 25.

70. The question may be asked whether the traditional law enforcement framework offers realistic solutions to extreme cases, such as those presented by some terrorist activities or hostage situations. Human rights law dictates that every effort must be made to arrest a suspect. In terms of the necessity test discussed earlier, graduated force that is proportional and necessary in the circumstances may be used in order to arrest the suspect. Where there is no other way to counter an immediate threat to life — for example where the proportionality requirement is met and there is reason to believe that a suspect will shoot immediately if confronted — instantaneous, unannounced force, including lethal force, may be used. Such cases can be resolved within the confines of the norms applicable to law enforcement without changing the well-established legal framework, or arguing that international humanitarian law applies in cases where it clearly does not.

71. In the case of international armed conflict, it is often stated that enemy soldiers "may be killed at any time and any place", and as a general rule no attempt to arrest has to be made and no opportunity to surrender need be given. However, as will be argued below, the use of lethal force during armed conflict remains subject to constraints such as military necessity. In non-international armed conflict, members of opposing forces may also be targeted as long as they directly participate in hostilities, but again this is subject to military necessity. When a combatant, or a direct participant in hostilities is placed hors de combat, or surrenders to the enemy, the enemy may not kill or injure such a person.[43]

72. A State may, under no circumstances, follow an approach in terms of which an offer to surrender will not be accepted. Orders that "no quarter be given" constitute war crimes.[44]

73. The underlying philosophies of international human rights law and international humanitarian law are different. Actions taken against a suspect in the law enforcement context are premised on the notion of suspected guilt of criminal conduct. As was alluded to earlier in the report, the final decision to shoot should be taken as near in time as is possible to the actual shot being fired, in order to allow for the suspect concerned to change his or her mind and withdraw from the conduct that poses a threat to the life of another or others.

74. In international armed conflict, the use of lethal force is generally based not on suspected individual guilt, but on the enemy's status or active membership of a larger collective, namely, a dangerous opponent. Individual guilt normally does not enter into the picture. Targeted killing, however, when conducted as part of such armed hostilities, does not conform to this paradigm. The target is identified on an individual basis, which is tied to his or her individual conduct or perceived guilt, which makes some comparison with the law enforcement paradigm difficult to avoid.

75. To determine whether an opportunity to surrender has to be offered to someone in the position of a Bin Laden, or an attempt be made to arrest him, one of the key questions is therefore a factual one, namely, whether there is an armed conflict in

[43] Article 40 of Additional Protocol I to the Geneva Conventions; article 4 (1) of Additional Protocol II to the Geneva Conventions.

[44] Article 8(2)(b)(xii) and article 8(2)(e)(x) of the Rome Statute of the International Criminal Court. Customary International Humanitarian Law rules 46 to 48 provide that it is also a crime under customary law.

the country in question, in this case in Pakistan, or where there is not an armed conflict in the country as a whole, whether there is one in the region involved. It is clear that there are ongoing non-international armed conflicts in Afghanistan and Iraq, as in both instances the United States forces and their allies are engaged in hostilities with the consent of the host Government, the opposing forces constitute organized armed groups who are identifiable as such, and the requisite threshold of violence has been met.

76. There is, however, disagreement on whether the situation in Pakistan amounts to an armed conflict. If the situation in Pakistan falls short of the legal definition of "armed conflict", as some commentators maintain, mostly on the basis that the intensity of violence does not meet the threshold of armed conflict, the law enforcement paradigm applies.

77. Even if it is accepted that there is an armed conflict in the particular country, or parts thereof, it still does not follow that there is an armed conflict in the particular region where the operations take place. As has been emphasized, the existence of armed conflict merely triggers the application of international humanitarian law. The use of lethal force during an armed conflict situation will only be lawful if such force is used in strict conformity with international humanitarian law.

78. What would be the consequences of the view that operations such as those in Abbottabad, Pakistan, took place in the context of a non-international armed conflict? The lawfulness of the action in this paradigm will be dependent on whether the target was a direct participant in hostilities (or fighter), and whether the force used complies with the requirements of international humanitarian law, including military necessity. Whether a person is a direct participant in hostilities is a factual question determined by the function the relevant person performs, "for such time" as the person performs that function.[45]

79. The International Committee of the Red Cross Guidance on direct participation in hostilities identifies what amounts to a new category of participants, those with a so-called continuous combat function.[46] According to the Guidance, a person belonging to this category may be targeted, like a combatant in international armed conflict.[47] However, to accept that such a person is a direct participant in hostilities entails stretching the categories at stake beyond their normal meaning. Whether a person is a combatant in international armed conflict is a question of status, as one becomes a combatant by virtue of membership in the armed forces of a party to a conflict. The continuing combat function category imports a similar determination made on the basis of status into the concept "direct participation in hostilities".[48] However, the relevant treaty language does not provide a clear basis for such a status determination in the context of direct participation in hostilities. Instead, direct participation in hostilities is a question of fact and lasts only as long as the relevant person is engaged in an activity that meets the threshold of direct participation in hostilities.

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[45] Article 51(3) of Additional Protocol I; article 13(3) of Additional Protocol II.

[46] International Committee of the Red Cross, *Interpretive Guidance on the notion of direct participation in hostilities under international humanitarian law (ICRC Guidance)*, 2009, p. 34.

[47] Ibid., p. 66.

[48] See A/HRC/14/24/Add.6, para. 65.

80. The situation in each country has to be assessed on a case-by-case basis, in order to determine whether there is an armed conflict or not. The idea of a global "war on terror", if taken literally, would imply that international humanitarian rules can be used to justify targeted killings in any country in the world, at any time, which would mean the entire globe is a theatre of war; a war without borders. This would undermine the very basis of the restraints on the use of force that international law seeks to maintain. Any claim that a particular targeted killing in Pakistan was lawful cannot be transferred to serve as an argument that similar actions in other countries or regions is lawful.

81. Other differences also need to be kept in mind. In a situation that occurs in the mayhem of the battlefield, providing an opportunity for arrest normally does not enter into the picture. The question can, however, legitimately be asked whether the same applies where a specific opponent is in relative isolation, who has been under surveillance for years, far from the battlefield, and overwhelming force is available. States must not inflict "harm greater than that unavoidable to achieve legitimate military objectives".[49] States may only exercise force that is militarily necessary and consistent with the principle of humanity.[50]

82. The view of the International Committee of the Red Cross, as expressed in its Guidance, is that "it would defy basic notions of humanity to kill an adversary or to refrain from giving him or her an opportunity to surrender where there manifestly is no necessity for the use of lethal force".[51] Indeed, the principles of military necessity and humanity dictate that a person may not be killed where less harmful means are available, such as arrest.[52]

83. In situations of uncertainty, the onus of proof becomes important. States are required to provide the legal basis for targeted killings.[53] Those who wish to stretch established categories and rules of international law beyond their established meaning have to justify this.

84. International humanitarian law requires a State to investigate, and if appropriate, prosecute individuals for violations.[54] Similarly, human rights law guarantees the right to a remedy.[55] Transparency is a necessary component of the obligation incumbent upon States to investigate alleged violations of both international humanitarian law and international human rights law. The starting point for States to comply with their obligations to ensure transparency and accountability is to disclose the safeguards in place when conducting such operations which ensure that violations are not committed. These safeguards must include the possibility to abort any targeted mission should the continuation of the

[49] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, para. 78.

[50] Article 1(2) of Additional Protocol I; preamble to the Hague IV Regulations concerning the Laws and Customs of War on Land; article 142 of the Third Geneva Convention; and article 158 of the Fourth Geneva Convention. See also A/HRC/14/24/Add.6, para. 77.

[51] *ICRC Guidance* (note 46 above) at p. 82.

[52] Israel High Court of Justice, *The Public Committee against Torture et al. v. The Government of Israel, et al.*, HCJ 769/02, Judgment of 14 December 2006 (Public Committee against Torture in Israel), para. 40.

[53] See A/HRC/14/24 /Add.6, para. 87.

[54] Customary International Humanitarian Law, rule 158.

[55] Naomi Roht-Arriaza, "State responsibility to investigate and prosecute grave human rights violations in international law", *California Law Review*, vol. 78 (1990), p. 463.

operation place legal obligations in jeopardy; for example, if the target is hors de combat or surrenders.

85. To a significant extent, the eventual assessment of situations of this kind will have to turn on the scope of the potential violations of the right to life. Even one (especially high profile) case could set a dangerous precedent, also for other States to follow, but the more continuous and systematic a practice of questionable targeted killing becomes, the more questions will be raised.

II. Conclusions

86. **Perceptions about looming dangers often prompt attempts to justify the use of lethal force on the basis of an expanded "protection of life" principle, where the threat is neither present nor ongoing. The scale of the current danger, it is then argued, is such that the perimeters of defence need to be pushed outwards, or forwards, into the future.**

87. **The fact that one is dealing with such situations should not give rise to different standards concerning the use of force. As stated by the International Commission of Jurists:[56] "Human rights and humanitarian law were not drafted with peace and political stability in mind. Rather, the very raison d'être of this legal system is to provide States with the framework that allows them to respond effectively to even the most serious of crises." To follow a different approach will undermine the basic structures of the rules of international law.**

88. **The main principles concerning the use of lethal force in accordance with international law, during arrest, may be summarized as follows:**

(a) **The power of the police to use lethal force during arrest is of the utmost gravity and should be regarded as an exception to the rule that needs to be justified, each case on its own facts;**

(b) **The starting point is the sanctity of life. International norms in this regard are premised on what has been called the "protection of life principle": the right to life may be limited only in order to protect life;**

(c) **Lethal force, in the sense of force that is likely or certain to end life, may therefore be used during arrest only in the interest of protecting life. Such action can be justified only where the suspect has committed or threatened a crime involving serious violence; poses an immediate or ongoing threat; if such action is otherwise proportional; and if it is necessary;**

(d) **Proportionality requires that, all things considered, the harm done to the aggressor does not outweigh the value of protecting the life of the victim. Necessity requires that no less harmful alternative (e.g., the use of less-than-lethal force, or other forms of arrest) is available;**

(e) **Lethal force may not be used purely to protect property;**

(f) **Ordinary members of the public should not be given the same powers of arrest as police officers;**

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[56] *International Commission of Jurists study* (note 10 above), at p. 18.

(g) **All instances where lethal force has been used should be investigated through an effective process, and where appropriate those who have violated the right to life are to be held accountable. The State must provide medical care for those whom its agents have wounded.**

89. **It is up to each society to give concrete legal contents and application to these norms. The question should be asked who or what institutions are in the best position to do this. The candidates include the legislature, the courts and individual police officers.**

90. **One approach is for the legislature to provide detailed standards on the use of lethal force, leaving little discretion to police officers and the courts. For example, the elements to be taken into consideration in making the proportionality test can be spelled out in legislation. Following this route carries the promise of legal certainty. The disadvantage is that no set of rules, however elaborate, can foresee and deal in a satisfactory way with the full complexity of the kinds of situations that arise in this context. Moreover, it could be seen as compromising the sanctity of life to announce in advance that there are formulas that describe in detail when and how lives may be taken. As was stated above, the notion of balancing lives, although unavoidable, remains problematic.**[57]

91. **The second approach entails that the legislature provides basic guidelines only, and leaves it to the police and the courts to give practical application to the international norms. A possible resulting lack of statutory certainty, it can be argued, is compensated for by the fact that such an approach allows for human discretion to be exercised on an ad hoc basis, first by the police and then by the courts and in the standing orders of the police. Over time, a set of practical rules could be developed in an organic way through custom that will be responsive to nuances and further developments in social norms, within the confines of the international norms.**

III. Recommendations

92. **Law reform should be undertaken to bring domestic laws on arrest into conformity with international standards, especially in respect of the core principles outlined above. Use-of-force policies should be developed that provide guidance to the police on the laws and values which should inform their use of force, on the permissible levels of force, and on other issues such as the need to give priority to the safety of civilians. These policies should address deadly, as well as less-than-lethal and non-lethal, force. They may be developed by national or other governments or by police agencies in accordance with international standards, acting in consultation with civilians. The laws, policies and practice should be maintained by United Nations human rights bodies.**

[57] The German Federal Constitutional Court found unconstitutional a provision in an anti-terrorism law, which empowered the Minister of Defence to order that a passenger plane be shot down if could be assumed that the aircraft would be used against the lives of others, inter alia because it would entail committing the State to using people as objects. *Bundesverfassungsgericht* (Federal Constitutional Court), *Neue Juristiche Wochenschrift*, 751 (2006), discussed in Oliver Lepsius, "Human dignity and the downing of aircraft", *German Law Journal*, vol. 7 (2006), pp. 761-762.

Domestic compliance with international standards in this regard should be monitored by United Nations human rights bodies.

93. **Laws that allow the use of lethal force in the defence of property, and those that give citizens the same powers as the police during arrest, should be revoked.**

94. **Governments should ensure that police agencies focus on developing tools and strategies for minimizing the need for lethal force to be used for arrest. These should include measures such as providing police with alternative non-lethal weaponry that can enable them to overcome suspect resistance more easily (though the use of such weaponry itself needs to be subject to strict control); emphasizing strategies of containment and de-escalation and more generally ensuring that the police make optimum use of their general superiority of numbers and technology in situations where it is anticipated that lethal force may have to be used.**

95. **Police and independent monitoring agencies should keep comprehensive data on the use of lethal force and, ideally, other dangerous forms of coercion by their members.**

96. **Training in human rights and in modern law enforcement methods, including less-than-lethal or non-lethal methods, is crucial. If it is necessary to involve the military in law enforcement, they need to undergo special training in human rights.**

97. **Modern technology (closed-circuit television cameras, cellphone recordings, etc.) should be employed to ensure accountability.**

98. **The established international standards in respect of the use of force provide the police with adequate room to deal with security concerns, also in the context of arrest, and should not be amended to achieve short-term security gains.**

99. **In addition to the role to be played by the United Nations supervisory bodies, regional human rights systems should also be encouraged to focus on the excessive use of force during arrest.**

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Assistance to survivors of the 1994 genocide in Rwanda, particularly orphans, widows and victims of sexual violence

Assistance to survivors of the 1994 genocide in Rwanda, particularly orphans, widows and victims of sexual violence

Report of the Secretary-General

Summary

The present report is submitted to the General Assembly pursuant to resolution 64/226. It provides a status report and an analysis of the current challenges to the delivery of relief and rehabilitation assistance by the United Nations and its partners to survivors of the 1994 genocide in Rwanda.

* A/66/150.

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I. Introduction

1. The present report is submitted to the General Assembly in compliance with its resolution 64/226, in which it requested the Secretary-General to encourage relevant agencies, funds and programmes of the United Nations system to provide assistance to survivors of the 1994 genocide in Rwanda, particularly in the areas of education for orphans, medical care and treatment for victims of sexual violence, including HIV-positive victims, trauma and psychological counselling, skills training and microcredit programmes; to support activities aimed at genocide victim remembrance and genocide prevention; and to support efforts to enhance judicial capacity-building.

II. Review of major developments

2. Seventeen years after the tragic events that occurred in Rwanda, the country has steadily recovered and is on the path to a more promising future. Indeed, Rwanda has made tremendous socio-economic progress and institutional transformation since the 1994 genocide. Overall, Rwanda's economic performance continues on track. Growth is mainly driven by the services sector, which is the biggest contributor of Rwanda's gross domestic product (GDP). Growth in the services sector was largely driven by the telecommunications sector and the development of the wholesale and retail trade, as well as transport and tourism. In addition, structural reforms have helped to maintain both good macroeconomic performance and substantial improvements in the social indicators.

3. Rwanda has made remarkable progress in the area of peace and reconciliation, restoration of law and order, and democratization. Similarly, the country has made very significant advances and has shown a strong commitment to rebuilding and strengthening national capacity for good governance, through institutional capacity-building, law and order, public sector reform and decentralization, and anti-corruption measures. Fostering and promoting democratic governance is a major development agenda for the Government of Rwanda and the United Nations, and hence governance issues are defined as priorities in both Vision 2020 and the economic development and poverty reduction strategy.

4. Rwanda's economy has experienced sharp growth since the end of the 1990s. Its strong performance has been driven by prudent reforms and public expenditure management, supported by good economic governance, strong performance in the services and agriculture sectors, and significant public and private investments. Rwanda, like most countries in the developing world, has also been affected by the global commodity price escalation and the financial crisis. As a result, growth slipped from 11.5 per cent in 2008 to 6.1 per cent in 2009 before reaching 7.5 per cent in 2010. In 2011, GDP is expected to increase by 7 per cent, mainly driven by the growth in the services sector.

5. Overall, poverty fell from 60.5 per cent in 2000/01 to 57 per cent in 2005/06. There was also a decline in the levels of infant and maternal mortality, HIV infection and malaria. Primary school enrolment has increased and nutrition levels have improved. Rwanda is a leader in gender equality, surpassing all countries in the world in female representation in Parliament and in executive positions in Government, including at the ministerial level. The most recent data show that

Rwanda is on track to achieving the Millennium Development Goals on primary school enrolment, gender equality and reduction of child mortality.

III. Current challenges to development

6. Despite the impressive progress over the years, enormous challenges remain and a lot still has to be done to address some of the significant challenges facing Rwanda, in order to ensure a steady path of sustainable development and accelerate the achievement of the Millennium Development Goals. For instance, despite high economic growth, poverty rates have not fallen proportionately, declining only by 3 percentage points, from 60 per cent (2000) to 56.9 per cent (2006), according to the Rwanda Integrated Living Conditions Survey 2005-2006. Achieving Millennium Development Goal 1 will require a focus on increasing rural incomes and agricultural output.

7. Rwanda is equally confronted with other challenges, including high population growth and fertility rates of about 2.7 per cent per year and 4.99 children per woman of reproductive age, respectively; high maternal mortality rates of about 750 deaths per 100,000 women giving birth; and high levels of malnutrition among children. The combination of high population growth rates and poverty impose a lot of pressure on the limited natural resource base, particularly land, resulting in incidences of food insecurity in some parts of the country. Furthermore, HIV continues to threaten Rwanda's economic and social fabric, undermining efforts to reduce poverty. While Rwanda has a strong policy and planning framework for achieving Vision 2020 and Millennium Development Goal targets for health and HIV/AIDS, effective implementation of these instruments is challenged by insufficient investment and insufficient human resource capacity.

8. Insufficient investment in infrastructure for energy, water and sanitation, and transportation, coupled with the combined pressures of agricultural production, high population growth, economic expansion and rising energy needs, put an increasing environmental stress on Rwanda. Consequently, there is a need for adequate financing and capacity-strengthening in order for the Government to deliver the necessary services in support of achieving the Millennium Development Goals.

9. Promoting shared economic growth and poverty reduction are important priorities of the Government of Rwanda in order to meet the long-term national development objective of building a middle-income country by 2020. The Government has developed social protection strategies aimed at uplifting the very poor in the communities. The Vision 2020 Umurenge Programme, with three key pillars — the public works programme, direct cash transfers and a microcredit scheme — aims to operationalize Vision 2020 and the economic development and poverty reduction strategy, and to directly reduce poverty at the community level, through the creation of employment opportunities for poor people and by providing cash to the poorest and most vulnerable households. The Government is also implementing the "one cow per family" programme to improve the income-earning potential of households. The Programme initiative has contributed to addressing the direct needs and demands of the population, especially the poorest and marginalized groups, while also providing the necessary space for local Government action and involvement in the efficient delivery of public services. Supported by the *Imihigo* system (performance contracts), the programme has helped to reinforce

accountability mechanisms in tracking the performance of local Governments and other service delivery agents.

10. The Government of Rwanda has made achieving the Millennium Development Goals central to its policy framework, as defined in the economic development and poverty reduction strategy for 2008-2012. The Government continues to demonstrate strong leadership and ownership of the development processes by implementing several mechanisms to enhance aid effectiveness and coordination among development partners, as well as facilitating a favourable environment for effective development cooperation. This provides a tremendous opportunity for the United Nations and development partners to support the Government in its efforts towards achieving the Millennium Development Goals. Specific investment opportunities exist in the areas of modern inputs for increasing agricultural production, small-scale water management, access to energy and roads, improved environmental sustainability, and scaling up basic health care, including family planning services.

11. Rwanda's long-term development goals are contained in Vision 2020 and the economic development and poverty reduction strategy for 2008-2012. The overriding long-term national development objective is to transform Rwanda into a middle-income country by 2020 with a knowledge-based economy. The Government continues to implement an ambitious reform programme for poverty reduction.

IV. United Nations support

12. In the area of conflict prevention, the United Nations provides assistance through the Rwanda National Police in support of crime prevention programmes resulting in the creation of anti-crime clubs in schools and communities. The resurgence of genocide ideology among students has prompted the Government of Rwanda to act and propose awareness programmes in secondary schools. One of the features of the Rwanda National Police programme is the direct involvement of the youth in crime prevention and reduction through training and public debates.

13. In 2010, the Government, through the National Unity and Reconciliation Commission, commissioned and produced the first reconciliation barometer with support from the United Nations. The barometer represents a unique and innovative tool for measuring the level of trust and reconciliation of Rwanda citizens. The study revealed that there have been significant improvements in terms of trust and reconciliation efforts between communities since the 1994 genocide. In the subsequent phase, the United Nations is supporting the National Unity and Reconciliation Commission to produce a follow-up study and to explore policy actions needed to further reduce occurrences of genocide related crimes.

14. In the area of justice, the United Nations is committed to providing support for the closing of the Gacaca processes, and will continue to contribute to the work of documenting and honouring the memories of the genocide victims. The Gacaca jurisdictions were created in 2001 in response to the need for timely handling of judicial files and clearing the case backlog. They were given the responsibility of handling the biggest part of the penal issues related to the genocide and to judge the category 2 and 3 suspects, while the classical jurisdictions dealt only with cases concerning the category 1 accused. Genocide defendants have been classified in several categories, with category 1 principally pertaining to planners, organizers,

instigators and supervisors of the genocide; category 2 to authors, co-authors, accomplices of deliberate homicides, or of serious attacks that caused someone's death; and category 3 to those who committed criminal acts or became accomplice of serious attacks, without the intention of causing death.

15. In 2010, the United Nations Voluntary Fund for Victims of Torture provided ongoing funding to two Rwandan non-governmental organizations (NGOs) — Kanyarwanda and Rwanda Women's Network. With that funding, those NGOs continued to provide medical, legal, psychological and social assistance to more than 1,000 victims of torture and members of their families from the 1994 genocide in the Kigali and Bugesera areas. The activities undertaken by the NGOs with the support of the Fund consisted, inter alia, of providing anti-retroviral treatment and nutritional support to women victims of torture and mass rape; psychological counselling, including home visits to those victims that manifest signs of deep trauma; and intensive therapies around the commemorative month of April each year. Additional medical care and assistance was also provided to people with complications resulting from side effects of anti-retroviral drugs. Moreover, Kanyarwanda has supported several thematic self-help groups, especially for victims who had a child as a result of rape. In this connection, psychological assistance was provided to mitigate the traumatic sequel with the aim to reconcile mothers with the unwanted children. In addition, travel expenses to attend therapeutic sessions and hospital costs were covered with the grants from the Fund. One important initiative was the participation of all United Nations staff in the "One dollar campaign" in 2009, a fund-raising activity for the orphans of the genocide.

16. The United Nations has also provided support to the Association of Genocide Widows (AVEGA) to facilitate training activities on a variety of areas, including counselling and basic knowledge and information sharing. The victims of the 1994 genocide have been empowered to be hired to provide technical support to a leading national security institution, the Rwanda National Police, to effectively respond to the needs of the victims of sexual-based violence. This is an indication that members of AVEGA who started as vulnerable victims have been empowered not only to be survivors but also as important actors in addressing sexual and gender-based violence.

17. In terms of economic empowerment, the United Nations continues to support capacity-building initiatives of AVEGA members and Benimpuhwe associations to develop and enhance their skills in handicrafts and the production of the Agaseke baskets (peace baskets) for export. This initiative has proven to be one of the key success strategies in addressing sexual and gender-based violence, since poverty is one of the predisposing factors of vulnerability to sexual and gender-based violence.

18. The United Nations is also supporting AVEGA through a project aimed at building capacity of paralegals in property and inheritance rights through sensitization of members and beneficiaries of AVEGA who are living with HIV/AIDS, about their property and inheritance rights, and at providing legal assistance to victims relating to property and succession disputes.

19. In terms of support to children, the United Nations supports the association Uyisenga n'Imanzi, which is involved mainly in raising awareness and the resolution of mental health problems of child survivors of the genocide. This support, which is given through the Ministry of Health, has enabled the NGO to train about 50 child-

headed households, orphans of the genocide, in the field of trauma management, prevention, reproductive health and sexually transmitted infections and HIV/AIDS.

20. Each year, the Federation of United Nations Staff Associations (FUNSA) reaches out to communities affected by the trauma of the 1994 genocide as part of its contribution to the national healing process. In 2010, representatives of the Federation visited the genocide memorial of Nyamata and made financial and in kind contributions to a household composed of 38 genocide survivors.

21. The United Nations is committed to further partnering with the Government of Rwanda in the reconciliation process and in supporting the survivors of the genocide.

V. Conclusions and recommendations

22. Despite the remarkable progress in peace and stability made by Rwanda since 1994, which has translated into improved economic performance, the country still faces challenges to sustain these gains and to achieve the Millennium Development Goals by 2015. The Government of Rwanda has made achievement of the Millennium Development Goals central to its policy framework, as defined in the economic development and poverty reduction strategy for 2008-2012. The Government continues to demonstrate strong leadership and ownership of the development processes by implementing several mechanisms to enhance aid effectiveness and coordination among development partners and by facilitating a favourable environment for effective development cooperation. This provides a tremendous opportunity for the United Nations and indeed development partners in general to support the Government in its efforts towards achieving the Millennium Development Goals. The United Nations system in Rwanda is a strong partner of the Government in its determination to assure a bright future for the people of Rwanda. In this regard, the United Nations will continue to provide the relevant strategic advice and support to national efforts in consolidating the gains so far made in ensuring peace and reconciliation, the rule of law, human rights and shared economic growth, as well as the efficient provision of and access to basic social services, particularly for the most vulnerable.

23. The selection of Rwanda as one of the eight pilot countries for the "Delivering as One" approach in 2007 led to the preparation of the second United Nations Development Assistance Framework (UNDAF) for implementation under the approach. This further consolidated United Nations support to the country, enhancing coherence and the efficiency of its operations. The current UNDAF cycle comes to an end in 2012 and, in view of the next UNDAF cycle commencing in 2013, the United Nations country team is starting the planning processes related to the development of the next UNDAF, which is also closely tied to the review of the economic development and poverty reduction strategy. Within this context, the "Delivering as One" initiative is committed to ensuring that the next United Nations Development Assistance Plan (2013-2017) is fully aligned with the national planning processes and the priorities set out in the second economic development and poverty reduction strategy. Alignment with Government priorities identified in the next economic development and poverty reduction strategy will provide an important opportunity for the United Nations system in Rwanda to show its commitment to the principles and practices of the Paris Declaration and the Accra

Agenda for Action. Alignment with government priorities will also help strengthen the role of United Nations agencies in processes of donor harmonization, donor coordination and division of labour.

24. Within the overall framework of support, interventions for genocide survivors include improving access to justice and witness protection programmes; promoting the participation of children, young people and women in the democratic process, including participation in decision-making at the national and local levels; improving access to quality preventive, curative, promotional and rehabilitative services, especially to victims of sexual violence, HIV-positive persons, children and women; enhancing trauma and psychological programmes; and promoting effective safety nets for the protection of the most vulnerable groups.

25. Further areas of support include enhancing housing and associated amenities for vulnerable groups such as orphans, widows, returnees and the internally displaced. Assistance is also provided for livelihood initiatives, orphans and vulnerable children, protection against gender-based violence, and the formulation and implementation of gender-sensitive social and economic policies in favour of the poor and disadvantaged.

26. Supporting groups to build sustainable micro, small and medium enterprises and other income-generating activities through capacity-building, microcredit and access to markets remains a priority for self-sufficiency and poverty alleviation. In addition, support to special initiatives to address the needs of those who have experienced physical injuries that have resulted in mental and/or physical disabilities is critical, as is support for ageing genocide survivors.